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REPORTER'S RECORD
VOLUME (4) OF (25) VOLUMES
TRIAL COURT CAUSE NO. 800112

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
VS.) HARRIS COUNTY, T E X A S
CHARLES MAMOU, JR.) 179TH JUDICIAL DISTRICT

VOIR DIRE EXAMINATION

On the 9th day of September, 1999, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Bob Burdette, Judge
Presiding, held in Houston, Harris County, Texas.

Proceedings reported by machine shorthand.

WENDY WILKERSON
Deputy Official Court Reporter
179th District Court
Harris County, Texas

FILED IN
COURT OF CRIMINAL APPEALS

MAR 21 2000

ORIGINAL

Troy C. Bennett, Jr., Clerk

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VOLUME 4 (1-233)

September 9, 1999

THE COURT: Okay. For the purposes of the record, we're back in Cause No. 800112. State of Texas versus Charles Mamou. The time of the clock on the courtroom wall is about 8:22 a.m.

Before beginning the voir dire individually, as I understand it, earlier this morning Venire Person No. 12 who travels by the name of Brenda Wagy, W-A-G-Y, called the courtroom and it is my understanding that Mr. McClellan, the prosecutor who simply happened to be here, picked up the phone having no idea who the caller was and it was indeed Ms. Wagy. And without going into that, I understand Mr. McClellan, you talked to her firsthand. What did you say, please?

MR. MCCLELLAN: First of all, I answered the phone as "capital" and she asked for the 179th District Court and I said this is 179 Capital Court and she identified herself as being a juror who was selected yesterday and identified herself as No. 12,

1 Ms. Wagy. She said she should have brought it up
2 yesterday she has a 5-year-old kindergartner that she
3 takes care of.

4 She was able to get somebody to watch the
5 child or make arrangements for the child to get to
6 kindergarten the other day. Today they were unable
7 to do so. And she said: "I should have claimed my
8 child exemption when I had the opportunity," and she
9 was not going to be able to be here and she doesn't
10 know whether she could be here during any of the
11 trial.

12 She said she wanted to be a juror before,
13 would like to be a juror, but this appeared to be a
14 problem she couldn't work around. I told her she
15 needed to call back at 8:20 and talk to you, Judge.

16 THE COURT: It's 8:24, and my recollection
17 is Ms. Wagy is blond. She's not called back, yet.
18 Each is accurate. The questionnaire she had filled
19 out does show she has a 5-year-old child that goes to
20 school. And while I'm not speaking for Ms. Wagy,
21 Mr. McClellan did not use the magic words thus of the
22 problem is that she wishes to claim her exception.

23 Mr. Hill, any objection to that claim?

24 MR. HILL: Judge, all I would ask since her
25 number is 12 and not going to be getting to her, I'm

1 probably not going to have any objection. She did
2 indicate she would call back to the court. Perhaps
3 you could just visit with her for a moment since we're
4 just talking about several minutes.

5 If we get to her and she hasn't called, I'll
6 certainly address the Court. Is that all right?

7 THE COURT: That's a deal. Now don't -- off
8 the record.

9 (Off the record discussion.)

10 THE COURT: Gentlemen, would you come up,
11 please, for a second. No. 9 and 18.

12 MR. MCCLELLAN: The other person I saw was
13 not in the pool. That was maybe somebody else.

14 THE COURT: Okay. So two. Would you come
15 up just a second before you leave.

16 (Bench conference not recorded.)

17 THE COURT: Ladies and gentlemen, good
18 morning to you. And before we begin, there is a
19 matter that I need to attend to. And, please, I hope
20 that you don't think that anything out of the ordinary
21 is going on; but there are a couple of you I need to
22 invite up to ask you a couple of questions
23 individually. So, please don't think you've done
24 anything wrong because you certainly haven't. It's
25 just something I need to attend to.

1 Mr. Hernandez, where are you, sir? If you
2 would come up, please. This is Mr. Eric Hernandez,
3 Venire Person No. 9. Mr. Hernandez, before we
4 begin the process that we discussed yesterday, earlier
5 this morning while you and a number of the other
6 folks -- not all of them -- the prospective jurors
7 were seated in the hallway, did you have occasion to
8 see anything? What did you have occasion to hear?
9 Any conversation related to this defendant in this
10 case?

11 VENIRE PERSON HERNANDEZ: No, sir.

12 THE COURT: Did you see anything that you
13 took to be out of the ordinary related to this
14 defendant that in any way involved what the case is
15 about, sir?

16 VENIRE PERSON HERNANDEZ: No, sir.

17 THE COURT: All right. Mr. McClellan, any
18 questions?

19 MR. MCCLELLAN: No.

20 THE COURT: Mr. Hill, from you, sir?

21 MR. HILL: Could you ask Mr. Hernandez if
22 he saw Mr. Mamou at all and if so --

23 THE COURT: Did -- earlier out in the
24 hallway before we brought you in here, did you have
25 occasion to see the defendant, Mr. Mamou, out in the

1 hallway?

2 VENIRE PERSON HERNANDEZ: I saw him pass by
3 with the guard

4 THE COURT: Okay. What was there, if
5 anything, at all about seeing him that caught your
6 eye?

7 VENIRE PERSON HERNANDEZ: Just the way he
8 was dressed up.

9 THE COURT: And how was he dressed, sir?

10 VENIRE PERSON HERNANDEZ: In an orange
11 outfit. That was it sir.

12 THE COURT: Okay.

13 VENIRE PERSON HERNANDEZ: He was cuffed.
14 I think he was cuffed.

15 THE COURT: That was a conclusion?

16 VENIRE PERSON HERNANDEZ: I think I saw
17 him --

18 THE COURT: Mr. Hernandez, what if anything
19 at all do you think as a result of seeing what you
20 saw? What result or what affect, if anything at all,
21 would that have upon your ability to be a juror in
22 this case?

23 VENIRE PERSON HERNANDEZ: Nothing, sir.

24 THE COURT: Would it in any way interfere
25 with what we had discussed yesterday, that is to say,

1 the defendant's presumption of innocence?

2 VENIRE PERSON HERNANDEZ: I'm not sure.

3 THE COURT: Okay. Mr. Hill?

4 MR. HILL: Yes, sir.

5 THE COURT: Thank you. Mr. Hernandez, have
6 a seat, sir. Do you have a motion?

7 MR. HILL: Yes, Your Honor.

8 THE COURT: It's granted. Ms. Tinnemeyer,
9 if you would please come up, ma'am. Ms. Tinnemeyer, I
10 want to ask you some questions about this morning
11 while you and perhaps all -- at least many of the
12 other panelists were out in the hallway before the
13 process began. Did you have occasion anytime this
14 morning in the hallway to see the defendant in this
15 case, Mr. Mamou?

16 VENIRE PERSON TINNEMEYER: (Nods head.)

17 THE COURT: Please talk out.

18 VENIRE PERSON TINNEMEYER: I'm sorry. No,
19 I didn't.

20 THE COURT: You shook your head no. She
21 needs to take it down.

22 VENIRE PERSON TINNEMEYER: Okay.

23 THE COURT: Were you privy to any
24 conversation from any source whether it was another
25 venire person, whether it was somebody else about

1 Mr. Mamou, the defendant in this case, at all this
2 morning?

3 VENIRE PERSON TINNEMEYER: No. People were
4 just talking about why someone out of jail, they
5 shouldn't be in jail. I'm not quite sure what they
6 were talking about.

7 THE COURT: And relate that to me again,
8 please, what you heard.

9 VENIRE PERSON TINNEMEYER: Somebody said,
10 "Why is a capital murderer out and why aren't they in
11 jail?"

12 THE COURT: And was there a response to that
13 rhetorical question? I guess it was rhetorical.

14 VENIRE PERSON TINNEMEYER: I don't know. My
15 response was, "I don't know if he is or he is not."
16 You see what I'm saying?

17 THE COURT: It was asked of you?

18 VENIRE PERSON TINNEMEYER: Yeah.

19 THE COURT: Okay. I see. That was the end
20 of it from your standpoint as far as you know?

21 VENIRE PERSON TINNEMEYER: I'm trying to
22 think. Yes, it was mostly about getting here at 8:00
23 o'clock, I mean --

24 THE COURT: I've heard that from all these
25 guys.

1 VENIRE PERSON TINNEMEYER: And everybody
2 thought 8:30. We're not supposed to be here today,
3 supposed to be here tomorrow. Ya'll don't do me that
4 way. I remember we were talking about figuring out
5 the forms. They were long.

6 THE COURT: Just general socializing. Okay.
7 Mr. McClellan, any questions?

8 MR. MCCLELLAN: So, you did not see
9 Mr. Mamou come into the -- coming to court today?

10 VENIRE PERSON TINNEMEYER: No.

11 MR. MCCLELLAN: Okay.

12 THE COURT: Mr. Hill.

13 MR. HILL: I guess the only question I would
14 have is if this potential juror could identify for us
15 the people that were making the comment about why a
16 person charged with capital murder is not in jail. I
17 mean, you don't need to turn around. And if you could
18 look at the panel and tell the Court where they're
19 seated, that would be helpful to us.

20 VENIRE PERSON TINNEMEYER: No. 3.

21 THE COURT: From the right front row?

22 VENIRE PERSON TINNEMEYER: Uh-huh. Chair
23 one, two, three. Chair three.

24 THE COURT: Young man, tall young man?

25 VENIRE PERSON TINNEMEYER: Got to be the

1 third one.

2 MR. HILL: It would be No. 6, right?

3 THE COURT: What direction?

4 VENIRE PERSON TINNEMEYER: I'm coming from
5 right here. One, two, three.

6 MR. HILL: She's got me turned around.

7 VENIRE PERSON TINNEMEYER: I tend to turn
8 people around.

9 THE COURT: Well, that wouldn't be the same.

10 MR. HILL: First three would get to three,

11 MR. MCCLELLAN: Don't worry about me.

12 MR. HILL: I'm -- just a couple more. Are
13 you counting from the closest to the Judge here?

14 VENIRE PERSON TINNEMEYER: Uh-huh.

15 MR. HILL: Okay. One, two, three. The
16 gentleman that's wearing a beige shirt.

17 THE COURT: The kind of tall young man?

18 VENIRE PERSON TINNEMEYER: Uh-huh. I mean
19 if you're asking was anything said directly, no, I
20 don't think so. It was just -- I think we were
21 questioning --

22 THE COURT: Let me also tell you and assure
23 you no one thinks there was any nefarious activity.
24 That's the point of this. There are some things we
25 need to explore to make certain we do understand the

1 depth of what did occur because, quite frankly,
2 through the fault of absolutely nobody here, there was
3 some administrative snafu this morning that may have
4 opened up the potential for a problem.

5 Is there anything else?

6 MR. HILL: No.

7 THE COURT: Ladies and gentlemen, please
8 this is just certainly remarkably unusual, there is a
9 telephone call. I never go to telephone calls. If
10 you'll remember yesterday, we invited 10. And look
11 around. You'll see nine. No. 10 is on the phone. I
12 need to attend to it. I need to take these gentlemen
13 with me.

14 (Recess taken.)

15 THE COURT: Ladies and gentlemen, now there
16 should only be nine of you. Let the record reflect
17 that the 20-minute after 8:00 o'clock phone call to
18 us occurred at 20 minutes of 9:00. Let's don't hold
19 these folks up. We'll pick that up.

20 Ladies and gentlemen, this is the first
21 day; and, I guess, first days quite frequently breed
22 confusion. If that is the case they ordinarily do,
23 today is no exception. I want to spend a couple of
24 minutes to talk with you about what we did not talk
25 about yesterday.

1 And, quite frankly, the reason we didn't
2 talk about them yesterday is because of the size of
3 the crowd. And what we're going to talk about we
4 could have made no headway because we don't know who's
5 going to be in the group. And I want to have it that
6 way so we're sure we understand what's on the table so
7 to speak.

8 We talked yesterday about the case that's
9 involved. We talked about the defendant over here,
10 Mr. Charles Mamou, who's represented by his two
11 attorneys, Mr. Wayne Hill and Mr. Kurt Wentz, who is
12 out running errands and will be along shortly. The
13 State of Texas' two Assistant District Attorneys, Lynn
14 McClellan and Claire Connors.

15 We talked about the defendant in this case
16 is charged with the offense of capital murder.
17 Specifically, it is alleged to have occurred in Harris
18 County, Texas, on the 7th day of December, 1998.

19 We talked about if the defendant is found
20 guilty of the offense of capital murder, the State is
21 going to request the jury to answer the two special
22 issues, the two questions we talked about, in such a
23 way that obligates the Court to assess the punishment
24 at death.

25 Before we go any further I would like to

1 spend some time with you talking about a couple of
2 concepts. First off, in the State of Texas there are
3 about a dozen different types of conduct that if
4 alleged by a Grand Jury's indictment and if proved
5 beyond a reasonable doubt would warrant a conviction
6 for the offense of capital murder.

7 For example, the intentional murder of a
8 police officer or law enforcement officer when the
9 person doing the killing knows that the person is a
10 law enforcement officer. Same with a fireman, murder
11 for hire, intentional murder of more than one person
12 during the course of the same criminal transaction,
13 the intentional murder during the course of robbery,
14 during the course of aggravated rape, during the
15 course of kidnapping, during the course of burglary.

16 There are just a number of different types
17 of conduct. About a dozen in all. We are confronted
18 in our case with two of those types. Type one in
19 paragraph one of the indictment, the allegation is
20 that there was an intentional killing of a woman by
21 the name of Mary Carmouche while the defendant was in
22 the course of committing the offense of kidnapping.

23 If that were to be proved beyond a
24 reasonable doubt, that would cause a jury to return a
25 verdict of guilty of capital murder. Also alleged

1 within the same indictment is another type of capital
2 murder that is to say the intentional taking of life
3 without justification or excuse of more than one
4 person during the course of the same criminal episode.

5 Specifically, it is claimed this defendant-
6 intentionally caused the death of a person named
7 Terrance Gibson and a person named Mary Carmouche.
8 That if proved beyond a reasonable doubt would
9 justify a jury finding the defendant guilty of
10 capital murder.

11 So there are two different types of
12 capital murder alleged to have been committed in
13 the indictment. And if the jury finds the defendant
14 beyond a reasonable doubt to be guilty of either one
15 of them or both of them, you'd find the defendant
16 guilty of capital murder.

17 What the other 10 different types of
18 conduct are, we don't care about because they're not
19 involved in our case. And when the trial is all over
20 with if you have an interest and want to know what
21 they are, I'll tell you. We don't want to muddy up
22 the water now. So any questions right now?

23 We talked about how the case is broken into
24 two parts. The first part of the trial the jury is
25 only concerned with whether the defendant is or isn't

1 guilty. Defendant not guilty, case over. Defendant
2 guilty, we have a second phase of trial which we get
3 off the evidence relating to the crime that was
4 committed because you'd already convicted the
5 defendant of that crime or we wouldn't have a second
6 phase.

7 And instead the second phase the focus of
8 the evidence is upon the character, background -- the
9 character or the reputation and background and the
10 personal moral responsibility of the defendant on
11 trial for the offense that occurred that can be --
12 come in. And when you have three or four people
13 involved in the same crime, a jury might want to know
14 who's more responsible, more blamable in the conduct.

15 That's what that's about. So you take all
16 the information that you hear from both sides -- from
17 both sides -- I didn't mean that, from both portions
18 of the trial, use it all and come up with what you
19 think is the right answer to the two questions that
20 are over here on this easel.

21 And we're going to spend time this morning
22 talking about these two questions. We take for
23 Question No. 1 -- and please look at them. It helps
24 to talk about them. Question No. 1 asks: Do you find
25 from the evidence beyond a reasonable doubt that there

1 is a probability that the defendant would commit
2 criminal acts of violence that would constitute a
3 continuing threat to society?

4 As we said yesterday no matter who the
5 defendant, no matter what the evidence, no matter
6 who the victim, no matter what the case, there's never
7 two possible answers to that question. Yes, we do, or
8 no, we don't. You answer the question the way in
9 which the evidence takes you.

10 Question No. 2 asks: Taking into
11 consideration all of the evidence including the
12 circumstances of the offense -- that's going to be
13 what you heard in the first part of the trial --
14 including the character, background, the personal
15 moral culpability, same as responsibility, that's
16 going to be what you heard the second half of the
17 trial.

18 The first half of the second question
19 simply tells you go back over all the evidence of
20 the case for the purpose of asking yourself this
21 question: Within the evidence in this case, is there
22 any mitigating circumstances that is sufficient in
23 our minds to cause us to believe that because of the
24 uniqueness of that mitigating circumstance, a life
25 sentence would be a more appropriate verdict in this

1 case than the death sentence.

2 Again no matter who the defendant, no matter
3 what the evidence, no matter who the victim, no matter
4 what the case, there's never but two possible answers,
5 yes or no. You answer whichever way you think
6 appropriate based upon the evidence.

7 If you answer "yes" to No. 1 and "no" to
8 Question No. 2, the law says I have no choice, I have
9 no option, I have absolutely no discretion I must
10 sentence the defendant to death and that's what will
11 occur. If you should answer those questions in any
12 way other than yes and no in this order, again, the
13 law says I have no other choice, I have no option, I
14 have no discretion I must sentence the defendant to
15 life, and that's exactly what I will do.

16 So, what we're saying is yes and no in that
17 order means death. A no to the first question means
18 you don't ever get to the second question because a no
19 to the first question is different than a yes or no.
20 Excuse me. Yes and no. Which means if you answer no
21 to the first question there's no way you can answer
22 the second question and ever get the death penalty
23 back in the case.

24 A no to the first question a is life
25 sentence. A answer of yes to each of those two

1 questions is a life sentence. A yes and no is a
2 death sentence. Any questions about the machinery?
3 Okay.

4 Let's talk about the content, the verbiage
5 contained within the questions. First off, you can
6 see the first phrase in the first question starts off:
7 Do you find from the evidence beyond a reasonable
8 doubt. Now, we talked about the reasonable doubt
9 business yesterday.

10 It is exactly the same thing here. What
11 that means to you is that the State's got to prove to
12 you what the answer to this first question should be.
13 We know that because any time something has to be
14 proved to you beyond a reasonable doubt that means the
15 State's got to prove it to you.

16 That's why starting off a case, all
17 defendants are innocent and they remain innocent,
18 unless or until the State's evidence proves beyond a
19 reasonable doubt that the defendant is in fact guilty.
20 So starting off a case at the first phase, a
21 defendant's always not guilty and stays not guilty
22 unless the State's evidence proves to the contrary,
23 that is that he is guilty.

24 So, it is at the second phase, starting off
25 the second phase of the trial the answer to that first

1 question is no. It's the same logic as starting off
2 the first phase being not guilty. The answer to that
3 first question starts off being no and stays no unless
4 the State's evidence proves beyond a reasonable doubt
5 that the answer should be yes.

6 So, what have we learned so far? What we
7 have learned is this: At the first phase of a
8 criminal trial, there is always the presumption of
9 innocence that the defendant on trial is innocent.
10 That presumption certainly can be overcome by
11 quality evidence that establishes in a jury's mind
12 beyond a reasonable doubt the defendant is not
13 innocent, in fact, based upon the evidence the
14 defendant is guilty.

15 At the beginning of the punishment phase
16 in a capital murder case wherein a person had been
17 found guilty of the offense of capital murder, the
18 presumption of being innocent probably had been erased
19 by the evidence presented in the first phase. But
20 now a new presumption pops up in its place.

21 And the presumption that pops up in the
22 beginning of the second phase of a capital murder
23 trial is that it is presumed that for all people
24 convicted of capital murder, the appropriate
25 punishment should be life.

1 Now, how do we know that? Well, we know
2 because starting off on this first question the answer
3 is no, unless the State proves beyond a reasonable
4 doubt the answer should be yes. We know from our
5 conversation that a no answer to the first question
6 means a life sentence because that's different than
7 yes or no in that order.

8 So, starting off at the second phase of a
9 trial wherein a person being convicted of capital
10 murder, it's presumed the appropriate punishment
11 should be life, unless the State's evidence proves
12 beyond a reasonable doubt the answer to the first
13 question should be yes.

14 Anybody have any questions how I got to
15 that point? Okay. So back to the verbiage. It
16 starts as: Do you find from the evidence beyond a
17 reasonable doubt there's a probability -- let's talk
18 about probability. Now, in the Court's charge --
19 you'll get it at the end of evidence in the first
20 phase and get a charge at the end of evidence of
21 the second phase, if there is a second phase.

22 There are going to be a lot of definitions
23 for you. There are going to be a lot of instructions
24 for you. There are going to be words, however, that
25 are not going to be defined for you. And if you say

1 to yourself, "How in the world do we know what it
2 mean? How are you going to define it for you?"

3 It's simple. If we're going to use a term
4 peculiar to the law and business there is no reason we
5 should expect you to know what that term is. We're
6 going to define it for you. If we're going to be
7 using a term we all use in home, work, friends, family
8 everyday, we're not going to define that for you.

9 Probability is one of those words we're not
10 going to define for you because you use that term all
11 the time. What probability means to you that's your
12 call. There are -- and I'm not permitted to define it
13 for you or instruct you as to what it means but I am
14 permitted to tell you by comparison that whatever
15 the word probability does mean to you, there are two
16 things it can't mean.

17 First off, whatever the word probability
18 means to you in your mind, it must mean something more
19 than a possibility. Anything could possibly happen.
20 Just cause something could possibly happen doesn't
21 mean it's probably going.

22 Flipping it over, whatever the word
23 probability means to you it can't mean something such
24 as a certainty. Simply because something could
25 probably happen does not mean that it's certain to

1 happen. And you know that because if you went to your
2 baker today and told him you're going to win the 14
3 million dollar lottery or probably going to win the
4 14 million dollars -- just give me seven and you can
5 have the rest of it -- and see what he says.

6 So we know that whatever probability
7 means, it's not going to mean something more than a
8 possibility but can't mean something greater than a
9 certainty. Why is that an issue? It's an issue
10 for this reason: The State has to prove beyond a
11 reasonable doubt the existence of a probability of
12 future acts of violence.

13 Can you see how grossly unfair it would be
14 to a defendant if the law only required the State to
15 prove beyond a reasonable doubt the existence of a
16 possibility that the person on trial could commit
17 future acts of violence?

18 Or to take the same thing and turn it
19 around. Can you see how unfair it would be to the
20 State to require them to prove beyond a reasonable
21 doubt a certainty of the existence of future acts of
22 violence?

23 So that's why we chose the middle ground
24 probably. If the word probably to you means something
25 that's more likely to happen than likely not to happen

1 that's a deal. Probability is, well, football season
2 started. On a football game the higher the odds the
3 less the probability.

4 You talk to some weather man -- talk to a
5 weather man on television. One of them says 20 one
6 of them says 40, 60. The greater the probability
7 progressing, that's your call. I do want you to know
8 whatever the word probability means to you it's got to
9 be something independent and different from the word
10 possibility and certainty.

11 Any questions about that? Back to the
12 question. Do you find from the evidence beyond a
13 reasonable doubt there's a probability that the
14 defendant would commit criminal acts of violence?

15 When we talk about criminal acts of violence
16 we mean a term most generic sense keeping in mind
17 it's the State's obligation to prove the answer to
18 this question should be yes. It's not required that
19 the State prove the existence of a probability that
20 the defendant would commit additional capital murder
21 in the future.

22 Certainly if that testimony -- that evidence
23 exists they are entitled to present it to the jury.
24 But the State is required to prove the existence of
25 the probability of the commission of criminal acts

1 of violence. Criminal acts of violence -- murders,
2 robberies, rapes, assaults, attempted murders,
3 kidnappings.

4 Those are all criminal acts of violence
5 towards persons. Criminal acts of violence can
6 include acts of violence as to property, the burning
7 down of somebody's building, or automobile, or so on.
8 The certain kind of burglaries that require a breaking
9 to get either onto land or into a building. The
10 beating in of somebody's windshield or automobile with
11 a brick.

12 All of those are criminal acts of violence
13 as to property but they are criminal acts of violence.
14 And it is that generic type circumstances that the
15 State is required to prove to you that the defendant
16 on trial would commit. There's a probability he would
17 commit additional acts of violence.

18 Criminal acts of violence. Any questions
19 about that? And these criminal acts of violence if
20 they were proved to you, must rise to the level that
21 they constitute a continuing threat to society.

22 Now, I want to spend just a couple of
23 seconds talking with you about the word "society"
24 because ordinarily when we think of society, we think
25 of people kind of like the same boat we are. We think

1 | about the people we see in our neighborhood.

2 We think about the people we see at work.

3 We think about the people we come into contact with.

4 We don't think about those others, for example, when

5 we think about society, we almost never think about .

6 | the people who are confined within the walls of the

7 | penitentiary. They also are a piece of society.

8 | I'd ask you to consider -- the word society

9 | is not going to be defined for you, but I would ask

10 | you to consider making a distinction in your mind if

11 | you feel comfortable with the distinction between the

12 word community and society.

13 We all live in different communities, but

14 we're all a piece of the same society. And these

15 criminal acts of violence must be such that constitute

16 a continuing threat to society. We know society must

17 necessarily include those people behind the

18 penitentiary walls because if they didn't, that means

19 that the nice lady who teaches school to the inmates

20 in the penitentiary system when she checks in to do

21 her work everyday at 8:00 o'clock, she does not

22 lose her right to be free from criminal acts of

23 | violence while doing her job and get back to her life

24 when she punches out at the end of the day.

25 That's preposterous. And it's the same

1 with nurses, same with medical personnel, same with
2 wardens, and same with inmates. They also have the
3 right to be free from criminal acts of violence.

4 So, what I'm saying is that I believe that
5 the word society can mean all people all the time
6 everywhere because if it didn't, that question would
7 say criminal acts of violence that constitute a
8 continuing threat to the citizens of Harris County,
9 Texas and it does not say that.

10 So, that's the first question. Does anybody
11 have any questions about the first question? Okay.
12 Again, if you answer no to the first question, you'll
13 stop right there. Case closed. Because there's no
14 answer you can come up with to the second question
15 that will be consistent with yes and no because the
16 death penalty is imposed. The death sentence will be
17 imposed at that time.

18 If you do answer the first question yes,
19 then you proceed to the second question; and the
20 second question is pretty unique compared with other
21 aspects of our law. The first thing that we can see
22 about the first question is that the phrase, "Do you
23 find from the evidence beyond a reasonable doubt," is
24 not in that question.

25 Now, that means this is going to be the very

1 first time that you, the jury, is going to be asked to
2 make a decision wherein the State's not required to
3 prove to you what the answer to that question should
4 be. And we know they're not required to prove it to
5 you because the phrase, "Do you find from the evidence
6 beyond a reasonable doubt," is not there.

7 Well, where in the world does that leave us?
8 Because if the State's not required to prove to you
9 what the answer to that first question -- that second
10 question should be, and they're not, and we know from
11 our conversation yesterday the defendant's never
12 required to prove anything.

13 So, if the defendant's not required to prove
14 to you what the answer to that second question should
15 be, and they're not, then where does that leave us if
16 nobody is required to prove to us what the answer to
17 it should be?

18 It leaves us perfectly simply in this
19 posture. The law recognizes there may be many cases
20 wherein there is absolutely no evidence of a
21 mitigating circumstance because nobody is required
22 to put that evidence into the case.

23 So, all we're simply saying is at the outset
24 there is no obligation of either side -- on either
25 side to supply any evidence of a mitigating

1 circumstance. The only obligation that exists is on
2 the jury to go back over all the evidence in the case
3 when you get to this question to see if there's any
4 mitigating evidence in the case, not that there be
5 any, but that you see. Double check yourself.

6 Basically this is a safety valve. Are you
7 satisfied that based upon the uniqueness of the case,
8 the death sentence is really what you want to do. If
9 you get to the second question, then you're going to
10 do it unless you take it away with a no answer -- I
11 mean a yes answer. That is to say you find a
12 mitigating circumstance.

13 Any questions about that? I'm going fast
14 and this is a little precise but please stop me if you
15 have a question. And, frankly, the only reason I'm
16 doing this is to make an attempt, as feeble as it may
17 be, to just simply try to make you feel comfortable.

18 This is not a hocus pocus operation. It's
19 pretty logical. You don't get that from television
20 but it truly is, and I want you to feel comfortable
21 with yourself. The word "mitigating" is not going to
22 be a word that's going to be defined for you in the
23 Court's charge.

24 Mitigating, however, as we're using it here
25 means is there anything any facet of some defendant's

1 background, their life, the circumstances of the case
2 that make you think they ought to have a second
3 chance? That's my phraseology, but that's basically
4 it. You think they're salvageable, think they ought
5 to have a life sentence.

6 There is a question -- there is a next
7 question in the second question which says is that
8 mitigating circumstance sufficient? So what we're
9 asking you to do if you find any mitigating
10 circumstances in the case, what we're saying to you is
11 this: Take that circumstance whatever it is or those
12 circumstances whatever they are and put them up
13 against and compare them to all the bad things you
14 heard about in this case and do these nice qualities
15 about the defendant rise to the level to overcome all
16 the bad things in the case.

17 If your answer to that question is yes, yes
18 is the whole answer to the question. If you answer no
19 your whole answer is no. Now what a mitigating
20 circumstance might be to one of you another one might
21 think exactly the opposite of you. That's your call.

22 For example, sometimes people might think
23 that comparative youthfulness might be a mitigating
24 circumstance. That is to say a person of some tender
25 years they're not developed and mature enough

1 emotionally to make intelligent, rational, logical
2 decisions.

3 Some other people might take that same
4 information and say: Well, a person this young is
5 already this mean blow them up. See, it is the same.
6 piece of information you react to it differently.

7 Sometimes people might think if there's any
8 evidence in the case about history that a defendant
9 might have of mental retardation some people might
10 think that tends to be mitigating. Other people might
11 tend to think it's not.

12 A whole different group of people may say:
13 Well, doesn't make a difference as to how retarded the
14 person is; a little bit, quite a bit, just some, a
15 lot. Now, if I knew the answer to that question --
16 may be mitigating may not be so. I'm just simply
17 saying these are things we're going to ask you just to
18 take into consideration.

19 Nobody is ever going to try and commit you
20 as to how you're going to evaluate it. But we do need
21 to commit you to the proposition that you would take
22 everything into account, reject that stuff that you
23 don't think is worthy of your consideration, that's
24 your call.

25 But consider everything and before the

1 trial ever begins, don't refuse to consider something
2 because you might hear exactly the right words that
3 would be meaningful to you to come up with a
4 particular verdict.

5 But those correct words may very well be
6 delivered by a witness who -- where you place
7 absolutely no credibility. And so that's why we go
8 not only by the message, we also go by the messenger.
9 And how you react to that, that's your call; but we
10 ask you to not preclude anything from your
11 consideration.

12 Those are the two questions and, as I say,
13 they come into play in the second phase of the trial
14 only and that's only if a person is convicted of
15 capital murder. You might say to yourself, "Well, why
16 are we talking about the punishment phase of the trial
17 when we haven't heard the first phase?"

18 I'm going to tell you the answer to that.
19 It is the only time we're ever going to be able to
20 explore with you and explain to you and talk to you
21 about the laws that applies, can apply and whether or
22 not you have any agreement or dispute with the law.

23 Can you see that if we didn't talk about
24 the second phase before the trial ever began and we
25 talked to you about the first phase, picked the

1 jury, put on all the testimony, couple of weeks go by,
2 jury comes back with a verdict of guilty. We come
3 back this time to get to punishment phase of the
4 trial, explain to you what the law is; and some juror
5 says, "I disagree with that. I couldn't possibly
6 follow that law."

7 That means we have to excuse that juror.
8 That means we don't have 12. That means we have a
9 mistrial. We wasted our time. We do it up front. I
10 want you to know the reason for doing it up front
11 has -- nobody is presuming this defendant to be
12 guilty.

13 Right now we are all presuming to the
14 absolute contrary that he's not guilty. But we have
15 to have a mechanism to be able to talk about all
16 aspects of trial and this is why we're doing it this
17 way, and I hope you can understand it. Any questions
18 so far?

19 Okay. Briefly, I'll tell you the types
20 of capital murder that we got here are: The
21 intentional murder of somebody during the course of
22 the commission of another felony. One paragraph
23 commission of the other felony is kidnapping. In
24 another paragraph the commission of other felony is
25 another murder. Two murders and a murder kidnapping.

1 In order for the State to obtain a
2 conviction for the offense of capital murder, they
3 must prove the existence of those two features either
4 the murder during the course of kidnapping or the
5 murder during the course of murder.

6 Anytime the State's required to prove two
7 things beyond a reasonable doubt, there are three
8 possible outcomes that can occur. Possible outcome
9 No. 1 is they can -- they do prove both features
10 beyond a reasonable doubt. And if that's the case,
11 the jury's obligation would be to find the defendant
12 guilty of capital murder.

13 Possible outcome No. 2, the State cannot
14 prove beyond a reasonable doubt the existence of
15 either of those two features. That is to say the
16 intentional murder and other felony. If that's the
17 case, the jury's obligation would be to find the
18 defendant not guilty.

19 Possible outcome No. 3 may be the State
20 in some hypothetical case, some imaginary case can
21 prove beyond a reasonable doubt the existence of the
22 murder but not be able to prove that it was committed
23 during the course of the other felony.

24 If that were to be the case -- and I'm
25 certainly not claiming that it's going to be. I'm

1 saying there is a logical progression of events. It
2 can happen. I would be obligated to give you a third
3 verdict or possible you'd had guilty and not guilty of
4 capital murder.

5 Third possibility would be guilty of murder.
6 That is to say not capital murder but murder, the
7 taking of a life or the intentional taking of the life
8 of a person without any legal justification, without
9 any legal excuse; but one that was committed not
10 during the course of another felony.

11 What we're talking about is carving out a
12 lessor crime out of a greater crime. Murder is a
13 lessor crime carved out of the greater crime of
14 capital murder. We know that the punishment for
15 capital murder is life or death. The range of
16 punishment for murder, however, is just simply
17 remarkably different.

18 The range of punishment if a person is
19 convicted of murder in the State of Texas can be by
20 confinement in the penitentiary for life or by a
21 confinement in the penitentiary for any number of
22 years as long as that number is not less than five and
23 as long as it's not greater than 99. And in addition
24 to confinement a jury can, if they think it does
25 anything, impose a fine in some amount as long as the

1 amount doesn't exceed \$10,000.

2 You may say to yourself, "That's just
3 everybody. I mean that range is so broad. How --
4 why's it so broad?" Well, because you hear about the
5 murders on the television because they're the ones
6 that sell title. And you might say to yourself -- and
7 many of them are awfully vicious, awfully brutal,
8 awfully random, awfully wanton and there are others
9 that aren't so.

10 And nobody is going to supply you or commit
11 you to what the value of a dead body is. Even
12 insurance companies don't do that. They say that
13 every dead body is worth something different and you
14 know that because you pay different premiums. Younger
15 people going to be paying less premiums than older
16 ones.

17 The probability you're going to live. Now
18 in a criminal world, criminal case, the background of
19 the person who's deceased might have a bearing. The
20 background of the person on trial might have a
21 bearing. We want you to have room to be able to do
22 what you think is appropriate based upon the
23 circumstances of the case.

24 If you have a nice husband and wife been
25 married 50 years and 70 years of age; the wife is

1 critically ill. She's going to die. Everybody knows
2 it. He loves her; she loves him. He doesn't want to
3 see her suffer. She's on a life support system. They
4 discuss it. By her request and his agreement, he
5 pulls the plug so she won't suffer. She dies.

6 Without getting into the morality of that,
7 in this State that's murder. But he didn't kill her
8 out of anger, didn't kill her out of hate, didn't kill
9 her out of revenge. He killed her out of love. Maybe
10 you wouldn't think that would be a life in the
11 penitentiary case.

12 Then you got the kind of cases you see on
13 television. Maybe you think there that's a deal.
14 Then you got the kind of cases you perhaps probably
15 never thought of. How about the 18-year-old boy who
16 is the only person trying to raise his little sister
17 who's 14, and he's doing the very best he can with
18 what limited tools he is supplied with.

19 And every morning he makes sure before he
20 goes to work she gets up, gets dressed and goes down
21 to the junior high school. And he comes home one day
22 and he finds out that there has been this guy, this
23 adult selling dope to his little sister and he goes
24 down there with a gun and kills him.

25 Now maybe you think that wasn't a life case,

1 maybe you would. That would be your call. All
2 we're simply saying is that we're giving you room, so
3 to speak. And after all of the evidence in the case
4 has been presented to you, you supply what you think
5 is the right punishment based upon that evidence in
6 that case.

7 So my question to you is this -- and it's
8 back to what we touched on yesterday about the fact
9 that the lawyers for both sides have the right to have
10 jurors -- folks who will consider the entire range of
11 punishment.

12 I don't want you to think we're trying to
13 commit you now as to what you're going to do before
14 you ever heard anything. That's not the point. But
15 the point is we want to commit to the notion you're
16 available to do anything within the range depending
17 upon wherever the facts lead you in the case.

18 So, let me ask you this: Let's think about
19 the fact you're a juror in some imaginary capital
20 murder case. Your jury has heard all the evidence in
21 the case. Your jury goes on in and your jury
22 deliberates and your jury unanimously finds that
23 whoever this defendant is that's on trial in this
24 capital murder case is not guilty of capital murder,
25 but you do find beyond a reasonable doubt that that

1 defendant on trial is in fact guilty of murder, you
2 come back and you have the second phase, the
3 punishment phase. Whatever the evidence was presented
4 to you there doesn't make any difference. Let's say
5 at the conclusion of that evidence the second phase
6 of this case that started out to be a capital murder
7 case by your verdict is a murder, is there anybody
8 here who could not consider assessing that imaginary
9 defendant's punishment at confinement in the
10 penitentiary for life if you thought based upon
11 however you evaluate it, whatever information was
12 presented to you in that case, that that was the right
13 result to reach.

14 Anybody here who would refuse to consider
15 that as a sentencing option if you thought it to be
16 appropriate based upon the facts? Okay. I take it
17 you would take it into account; and, again, I'm not
18 trying to ask you would you do it. I'm simply asking
19 if you were able to if you thought it was right.

20 I'm going to take that same question and
21 flip it over. Same jury in same imaginary capital
22 case and heard all the evidence in the capital murder
23 case and the jury finds the defendant not guilty of
24 capital murder but your jury unanimously does find the
25 defendant guilty of murder. You come back. You hear

1 the evidence of the second phase of trial, whatever
2 this evidence might be. You go out to deliberate your
3 verdict.

4 Is there anybody here who would refuse
5 to consider assessing that imaginary defendant's
6 punishment at confinement in the penitentiary for
7 five years if you thought, based upon whatever the
8 evidence was that was presented to you in that case
9 and your evaluation of that evidence, that that was
10 the right result to reach?

11 Anybody here who would refuse to take five
12 years into consideration as a legitimate sentencing
13 option if you thought it was the right thing to do
14 based upon the facts? Okay. I take it that you
15 would. So what you're telling me is you're wide open
16 to the range of punishment of five years to life,
17 anything in between and whatever decision you reach.
18 If this ever came to play in the trial, you would
19 reach this decision based upon wherever the evidence
20 lead you.

21 And evidence in trial is supposed to be, I
22 guess, considered to be something like the leash on a
23 dog. We're the dog; the evidence is the leash. And
24 we go wherever in terms of result where that leash,
25 being the evidence, takes us: Guilty, not guilty,

1 life, death, 5, 99, 50, 12, 18, whatever.

2 I'm not saying that's going to come into
3 play in this case. I'm simply saying that I know that
4 is a theoretical possibility. Any questions about
5 that?

6 One other aspect I want to touch on briefly
7 is that we have a rule and I'm going to talk about
8 the concept without trying to be just really legally
9 precise but give you an idea what I'm talking about.
10 If you have a bunch of people committing crime, they
11 agree to commit it. They know that's what happened.

12 If you participate in a crime our law in the
13 State of Texas says that a person who is involved in
14 that conspiracy, so to speak, cannot be convicted upon
15 the uncorroborated testimony of one of the other
16 co-conspirators. There has to be instead some other
17 evidence from some independent source other than the
18 conspirator that tends to connect the defendant on
19 trial to the commission of the crime.

20 An example: You got two people who get
21 together. They agree to go rob a bank. One guy's
22 the getaway; driver the other guy the bank robber.
23 They both do their jobs. Guy drives up, guy robs
24 bank. Backing off they both get arrested. There is
25 absolutely no evidence on the getaway man except for

1 what the guy who actually went into the bank did.

2 What I'm saying is if the only testimony
3 that exists in the trial of the getaway driver is
4 the testimony from the bank robber and there is
5 absolutely no other -- absolutely no other evidence
6 from any independent source that tends to connect the
7 defendant to the commission of that crime, then the
8 getaway driver cannot be convicted.

9 Eyewitness says, "Yeah, I saw that person."
10 That's evidence that tends to connect the defendant
11 fingerprints, connection, all sorts of things that
12 tend to connect the defendant to the crime. There has
13 to be some other evidence other than the evidence of
14 an accomplice. That's the legal term.

15 Anybody here find that absolutely alarming
16 or objectionable or offensive to where you couldn't
17 follow that law? I don't know what's going to happen
18 in this case. Theoretically I could -- have I omitted
19 anything other than the things we had talked about?

20 MR. MCCLELLAN: The 40.

21 THE COURT: I'm sorry. Thank you. We
22 talked earlier about persons convicted of capital
23 murder what that means life or death -- excuse me --
24 the punishment for persons convicted of capital murder
25 depending on how the questions are answered, life or

1 death. What does death mean? Well, that's pretty,
2 obvious, not going to get into that.

3 Sometimes we have a confusion as to what
4 a life sentence means. I'm going to attempt to
5 eliminate confusion. And I will tell you that in this
6 case if this defendant is convicted of the offense of
7 capital murder and if these two questions are answered
8 in such a way, the law obligates me to sentence the
9 defendant to life. A life sentence means in this case
10 that the defendant can't become eligible for parole
11 until he, the defendant, has actually served 40
12 calendar years.

13 There is no acute way of counting in
14 penitentiary. Twenty-seven is going to come after 28;
15 32 is going to come after 31. I mean it's 40 years,
16 and that means 2039. And that means when the
17 defendant can become eligible for parole
18 consideration. A person's eligibility for parole
19 consideration has absolutely nothing to do with
20 whether they will or will not be awarded parole or
21 when they will if they are awarded parole after 40
22 years because decisions made about awarding parole
23 will be made by prison authorities.

24 They'll make evaluations of a person's
25 conduct during the 40-year stay they've been here.

1 Those evaluations will be sent to the Board of Pardons
2 and Paroles. The Board of Pardons and Paroles will
3 make those evaluations and make recommendations to
4 the Governor of the State of Texas.

5 I haven't the foggiest idea who the governor
6 in Texas is going to be in 2039. Whoever he or she is
7 is entitled to either follow those recommendations or
8 reject those recommendations or make just simply
9 absolute object political decisions.

10 We don't know what's going to happen. The
11 point of it is, however, I do want you to know at the
12 conclusion of a trial wherein a defendant has been
13 found guilty of capital murder and a life sentence
14 has been assessed, it is just perfectly possible
15 that defendant on trial would spend the rest of
16 natural living life in the penitentiary.

17 It is also equally possible that at the
18 conclusion of 40 years, another hypothetical defendant
19 might be awarded parole. What is going to happen in
20 this case we don't know. And, therefore, what I'm
21 going to tell you is what might happen in the event of
22 a life sentence in terms of parole can't in any way
23 interfere or be a consideration of yours in how you
24 answer either one of those two questions.

25 Those two questions must be based upon the

1 evidence presented in the case not upon speculation as
2 to what might happen in the future. But I want
3 you to know what a life sentence means. Anybody have
4 in questions about that?

5 VENIRE PERSON: Sir, when you say "40
6 years," you mean he's going to stay 40 years, not good
7 behavior before 15 years, 10 years.

8 THE COURT: I said about as clearly as I
9 could 2039. Now, again, what happens at that point,
10 don't know. That's where the variables start coming
11 into play. That is no availability for 40 years.

12 Anybody else? You folks have just completed
13 your first year in law school. Is there anybody that
14 has any questions at all about anything that we've
15 touched on to this point?

16 Okay. Let me say this to you, we're going
17 to, in just a couple of seconds, visit with you
18 individually. Please, before we start this process, I
19 want you to know that -- and I didn't say this to you
20 yesterday. Frankly, I forgot it. We're never going
21 to talk to you about the facts of this case ever.

22 And you might say to yourself, "That's
23 pretty stupid. If I'm going to be a juror in this
24 case why don't we talk about that case? Well, because
25 of this: Any one of the four lawyers -- I've known

1 them all for years and trust all of them -- and you
2 pick any one of these four, pick all four, and you say
3 to yourself, "If any of these lawyers told me the
4 third witness in this case is going to testify to A,
5 B, C and D, I'm going to tell you right now exactly
6 what I would do because I just trust these lawyers
7 that much.

8 So, sure enough the trial comes rolling
9 around. The third witness gets on the stand and
10 testifies exactly as was predicted; A, B, C and D.
11 But because it's your job to evaluate the credibility
12 and believability of the witness, you might say to
13 yourself, "This third witness, I wouldn't believe a
14 single word that person said."

15 So, that's why we're never going to talk
16 about the facts. That's why we're never going to talk
17 about the evidence. That's why we're never going to
18 try and commit you as to what result you will reach.
19 We are going to make everyone, however, commit that
20 you will follow the law. That you'll listen to
21 everything. Take everything into account in terms of
22 consideration. Reject that you think should be,
23 accept that you think should be and come up with what
24 you think is the right result to reach.

25 But when the lawyers are talking to you

1 individually, please don't think that they're going to
2 try and commit you to anything in this case because
3 they're not. They just want to be sure that if you're
4 a juror in this case, you're going to sit in one of
5 those chairs, going to sit back and going to drink in
6 every single bit of testimony. Use it all. Evaluate
7 it how you see fit; and come up with what you think is
8 the right verdict, based upon how you evaluate the
9 information that they supply it. Their job is to
10 supply it. Your job is to use it.

11 Any questions? Okay. Before we go any
12 further, there was a time when I knew what this number
13 was. Mr. Cardenas, if you would stay and the other
14 folks would retire to the hallway. We'll get you back
15 in here as quickly as we possibly can.

16 (Prospective jury panel retired except for
17 Prospective Juror No. 8, Mr. Ruben Cardenas.)

18 THE COURT: Mr. Cardenas, come on up, sir.
19 First off, sir, please don't feel you're being singled
20 out. Please don't feel that you're on the spot
21 because you're not. I just need to ask you a couple
22 of questions along the lines some questions I asked
23 some other folks.

24 Frankly, I wanted to get into the process
25 before I went into this specifically with you. This

1 morning before the folks -- all of you were brought in
2 here and while you were out in the hallway, was there
3 a time this morning where you saw the defendant,
4 Mr. Mamou.

5 VENIRE PERSON CARDENAS: No.

6 THE COURT: And talk out. She's writing
7 down what is being said.

8 VENIRE PERSON CARDENAS: No.

9 THE COURT: Was there a time you ever had a
10 conversation with anybody regarding Mr. Mamou and the
11 offense and whether he was or wasn't in custody or
12 anything like that?

13 VENIRE PERSON CARDENAS: Yes.

14 THE COURT: Do you recall with whom that you
15 had that conversation? I realize that you just met
16 these folks and maybe don't know their names. Do you
17 remember who it was that you talked with? Was it more
18 than one person?

19 VENIRE PERSON CARDENAS: No, just the lady
20 in the blue.

21 THE COURT: Okay. The one that was up here?

22 VENIRE PERSON CARDENAS: Uh-huh.

23 THE COURT: And can you tell us please, sir,
24 about that conversation, what was said, not that
25 anything said was wrong. We just need to be sure.

1 VENIRE PERSON CARDENAS: I was asking what
2 was capital murder. I don't know what "capital murder
3 means, and she was talking to me. So, I don't know,
4 maybe he killed somebody, a sheriff deputy. And going
5 that route says, "Well, why do you want to kill him
6 for?" I mean the other people in jail, what's the
7 difference between him and other people in jail now?
8 And basically that was it.

9 THE COURT: Okay. So your comments were
10 more a conceptual thing not a specific thing in
11 question.

12 VENIRE PERSON CARDENAS: No, I was asking
13 what was it.

14 THE COURT: Mr. McClellan, any questions?

15 MR. MCCLELLAN: No, Your Honor.

16 THE COURT: Mr. Hill, Mr. Wentz.

17 MR. WENTZ: The question -- you had a
18 conversation?

19 VENIRE PERSON CARDENAS: No, just asking
20 her what capital murder is and she knew.

21 MR. WENTZ: And for your purposes you asked
22 killing a police.

23 VENIRE PERSON CARDENAS: No, I'm just asking
24 what is capital murder. Why is -- what is capital
25 murder. I didn't know.

1 MR. WENTZ: Okay. And what else did you say
2 in the course of your conversation?

3 VENIRE PERSON CARDENAS: What was capital
4 murder. And she didn't know either. We were just
5 here. Didn't know what time we had to be here, 8:30
6 or 8:00 o'clock, 8:30 or outside.

7 MR. WENTZ: You didn't see the defendant?

8 VENIRE PERSON CARDENAS: No.

9 MR. WENTZ: I'm through.

10 THE COURT: All right. Thank you very much.
11 Step outside, sir, please. Mr. Hill, did we ever get
12 on the record about Ms. Waggy?

13 MR. MCCLELLAN: No.

14 THE COURT: For the purposes of the record
15 perhaps at the time we left the record the idea as to
16 Ms. -- No. 12, Ms. Waggy was that if she did call and
17 claimed her exemption, Mr. Hill would have no
18 objection to her based upon what we provided the
19 record with earlier, have no objections to her
20 claiming exemption. And if we got to her and haven't
21 heard from her in the ordinary course of business, he
22 would have no objection.

23 We did hear from her, did talk to her on the
24 phone personally in my presence, on my end of the line
25 Mr. McClellan and Mr. Hill, and I informed them at the

1 time that Ms. Wagy specifically did say that because
2 of her five-and-a-half-year-old child she was now
3 requesting the exemption she had been entitled to
4 because she had a sitter or caretaker when she came
5 but lost that ability to do that any longer.

6 MR. MCCLELLAN: Okay.

7 MR. HILL: No objection.

8 THE COURT: Ms. Wagy's exemption has been
9 honored. She has been excused. There was somebody
10 else, Mr. Hernandez, was that correct?

11 MR. HILL: Yes, Your Honor.

12 THE COURT: And you because of his
13 conversation earlier requested that he be excused.

14 MR. HILL: Yes, Your Honor.

15 THE COURT: That request is granted as to
16 No. 9. What about Mr. Cardenas?

17 MR. HILL: Well, I'm basing my concern on
18 him based on what the other Juror 18 told us that he
19 made the comments about why a person charged with
20 capital murder is not in jail and that was Ms.
21 Tinnemeyer. I guess maybe question him a little bit
22 more.

23 THE COURT: You have based upon the record
24 as it exist now, you have no position?

25 MR. HILL: Well, my position would be he

1 should be excused based on what Tinnemeyer said
2 because she came up here and was candid about what
3 was being said in the hallway. Mr. Cardenas doesn't
4 recall making that statement. I don't know. I'm not
5 real comfortable with him. I would ask -- I'm
6 challenging him. Going to ask the Court to excuse
7 him.

8 THE COURT: Mr. McClellan, I tell you my
9 best guess probably, based upon the record, really not
10 there. I refuse on the first day to have a case
11 reversed.

12 MR. MCCLELLAN: So the second day to
13 reverse.

14 THE COURT: We'll take that up on the second
15 day. Hopefully, administratively, we won't have the
16 problems again. If that's your request and motion,
17 it's granted.

18 MR. MCCLELLAN: What number is he, Your
19 Honor?

20 THE COURT: No. 8 and No. 9, each
21 challenges, each are granted. Okay. Is there
22 anything I need to add to this business?

23 MR. MCCLELLAN: Nope.

24 THE COURT: Okay. Are we ready for
25 Mr. Pena?

1 MR. HILL: Yes.

2 THE COURT: All right. Mr. Pena, please.

3 (Prospective Juror No. 2, Mr. George Pena
4 entered the courtroom.)

5 THE COURT: Hi, Mr. Pena. Walk straight
6 across this way and come over here and have a seat and
7 make yourself as comfortable as you can be. And how
8 are you today, sir?

9 VENIRE PERSON PENA: All right.

10 THE COURT: Well, Mr. Pena, first off let me
11 ask you this.

12 VENIRE PERSON PENA: Uh-huh.

13 THE COURT: Taking into account yesterday
14 and the things we talked about yesterday adding to
15 that this morning and the things we talked about this
16 morning out of everything that we have talked about so
17 far, do you have any questions at all for me?

18 VENIRE PERSON PENA: No, sir.

19 THE COURT: Is there anything, Mr. Pena,
20 that up to this point we have not yet talked about
21 that you feel as though we should talk about because
22 it might have some bearing on your ability to be a
23 juror in this case?

24 VENIRE PERSON PENA: No.

25 THE COURT: Is there anything at all,

1 Mr. Pena whether it be something, for example, about
2 your personal life whether it be something, for
3 example, about your job whether be it something, for
4 example, about your health or be about something else
5 that you think would in any way interfere with your
6 ability to be a juror in this case during the time
7 frame that we've talked about?

8 VENIRE PERSON PENA: No, sir. No problem.

9 THE COURT: The lawyers in just a second,
10 sir, are going to ask you some questions; and I want
11 you to know that whatever the questions they ask you,
12 they are not in any way meant to pry into your
13 personal life or to in any way embarrass you. That's
14 the last thing any of them want to do.

15 All the questions boil down to is this:
16 They just want to be satisfied you can be air to
17 the State, listen to everybody, do what you think you
18 ought to do based on the evidence and calling them --
19 call it down the middle as you saw it. And your job
20 is not to make either side happy or the other said
21 happy or both sides happy or to make me happy.

22 Your job is five years from now Mr. Pena
23 wakes up and says to himself, "No, sir, I did the
24 right thing." That's the only person who needs to be
25 happy. Before we begin, any questions for me?

1 VENIRE PERSON PENA: No, sir.

2 THE COURT: Thank you, sir. Mr. McClellan.

3 MR. MCCLELLAN: Thank you, Your Honor.

4

5 **GEORGE PENA**

6 having been sworn as a prospective juror testified as
7 follows:

8

9

EXAMINATION

10 **QUESTIONS BY MR. MCCLELLAN:**

11 Q Mr. Pena, my name is Lynn McClellan. Along with
12 Claire Connors, we represent the State of Texas in this
13 case. I want you to sit back and relax. I'm going to ask
14 you to share with us, if you will relax -- you're probably
15 saying, "How could I relax up there on the witness stand?"

16 You have to realize you know the answers.
17 And we're going to get you to share with us what you know,
18 your opinions. We've never met you before. Never had the
19 opportunity to know you. We want to find out a little bit
20 about you in a short period of time.

21 You filled out the questionnaire the other
22 day and come to listen to the Judge yesterday and again
23 today. Since that period of time have you had any
24 thoughts, change your mind about anything as far as your
25 answers to the questionnaire or say, "I should have put

1 something down I didn't think about."

2 A No, sir.

3 Q Okay. Can you tell me in your own words what kind of
4 cases come to mind when you think of cases where you think
5 the death penalty ought to be available as one of the
6 forms of punishment, what kind of crimes?

7 A Just various -- just depends on a particular crime.

8 Q Okay.

9 A I mean, like the Judge was saying it's a broad
10 spectrum.

11 Q Okay. So, obviously, some cases you think it's
12 appropriate for and some may not be appropriate for?

13 A Correct.

14 Q Capital murder as the Court told you is murder plus
15 some aggravated circumstance. In a capital murder case,
16 you're always going to have a murder, always going to be
17 someone who's intentionally killed. And by murder we're
18 talking about the intentional taking of another person's
19 life without any legal justification.

20 We're not talking about killing someone
21 in self-defense because that's not murder, that's
22 justification. We're not talking about intentionally
23 killing someone. We're talking about capital murder
24 where someone intends to take someone's life and does some
25 act that effectuates that by taking life, it's their

1 intent to kill the person. Then it must be coupled with
2 the commission of some other crime.

3 And we have alleged in the indictment two
4 different ways. Murder during a kidnapping or in the
5 course of kidnapping or murder during the course of
6 another murder. Capital murder in the State of Texas,
7 though, includes murder during robbery, murder during
8 burglary, killing a police officer in the line of duty,
9 killing a child under a certain age.

10 All these kind of cases are those the kind
11 of cases you think the death penalty ought to be available
12 for in certain circumstances?

13 A Yes.

14 Q Okay. Now, for the offense of murder itself, the
15 death penalty is not available. I could go up and down
16 the street and pull up to someone and pull a gun out and
17 shoot them, you know, square in the head point blank and
18 laugh and drive off. That is murder not capital murder
19 because I didn't do some other crime.

20 Now, if I take their billfold, that would
21 be capital murder because it would be a robbery. If I
22 were to kidnap them, take them to another location that
23 could be capital murder. It's murder during a kidnapping.
24 But just intentionally and horribly and violently killing
25 someone without any other associated felony, it's murder

1 which is as the Judge told you has a range of punishment
2 as low as five years to as high as 99 years or life.

3 When I say murder, that's probably something
4 comes into your mind someone intentionally killing
5 someone. As the Judge told you there are thousands upon
6 thousands of fact situations that can fit within the
7 content of murder.

8 I mean you could have a mercy killing on
9 one end or a drive-by shooting of a kid on a bicycle on
10 another. Obviously, ought to receive different
11 punishments in a murder case not talking about capital
12 murder.

13 Now, in a murder case would you keep your
14 mind open to the full range of punishment as low as five
15 years or as high as 99 years or life and wait until you
16 heard all the evidence before you decided what punishment
17 ought to be received?

18 A Yes, I could.

19 Q Okay. So you have eliminated one end of the spectrum?

20 A No, sir.

21 Q You're fully open to the full deal?

22 A (Nods head.)

23 Q All right. I want to go over a couple of things in
24 the questionnaire. It shows in here you watch Court TV.
25 Asked about any articles you read or watched concerning

1 the death penalty. Have you watched any death penalty
2 type cases on Court TV?

3 A I just basically watch.

4 Q Just watch Court TV?

5 A Basically we have a satellite and flip through the
6 channels. And every once in a while something will catch
7 my attention and we stop.

8 Q Anything you've seen on Court TV affect your ability
9 to be a juror?

10 A All it is is a show.

11 Q Okay. All right. You indicate also you have an aunt
12 that works in the Harris County jail.

13 A Yes, sir.

14 Q She works over here. Does she work Franklin or in
15 701 whatever it is?

16 A Franklin.

17 Q Franklin.

18 A 1301 Franklin.

19 Q Okay. Do you ever talk to her about what goes on in
20 jail or other stuff?

21 A No, basically we're just family type deal. Our jobs
22 don't interfere with each other. I don't get into her
23 business.

24 Q Right. Okay. So, nothing about that relationship
25 with somebody who works in the jail will affect your being

1 a juror in this case?

2 A No.

3 Q It says: What are your feelings about the death
4 penalty? You said a person taking a life and has no
5 regret, you put "possibly." Okay.

6 A No remorse.

7 Q No remorse. You're saying then it might be possible
8 to have a death penalty. What do you think would be the
9 deciding factor that made you go from possible to yeah
10 this is -- this is the type of case?

11 A Extenuating circumstances it was committed in.

12 Q Okay. Facts of the case. And I'm -- all the
13 situations all the facts you hear about what happened
14 before, during and after the commission of the crime?

15 A Right.

16 Q That's what you get to hear about in trial. You know
17 ahead of time whether before spur-of-the-moment crime,
18 premeditated or well-thought out crime.

19 A Correct.

20 Q What happened during the crime, how the killing may
21 have happened, what happened after the crime, did the
22 person show remorse or braggadocios, going around having a
23 good time, whatever.

24 A Correct.

25 Q You think all those factors kind of help make that

1 decision?

2 A Definitely.

3 Q All right. And I didn't talk about the best argument
4 against the death penalty that you'd have to be absolutely
5 sure without a doubt the person did the crime. And I
6 think you also mentioned that in another place that no
7 reasonable doubt. Of course that is the burden of the
8 State and always stays with us.

9 I often though wonder if sometime people
10 they think beyond a reasonable doubt is beyond all doubt.
11 I mean I can tell you right now I can never prove any
12 case, and I've been a DA more than 18 years. I can never
13 prove a case beyond all doubt because to do that I think
14 you had to be a witness to a crime.

15 If you were a witness, then you couldn't be
16 a juror in this case; and what you have to do is rely upon
17 people who were witnesses who come in and tell you what
18 they saw happened. And so there'll always be some area in
19 judging whether that person is telling the truth or you
20 may have questions about I wonder why this happened.

21 Well, in the indictment you're never going
22 to see anything about where our proof is as to why
23 something happened. Always going to be questions at the
24 end of a perfect trial, if you will. So a lot of
25 questions may be raised.

1 Now, the issue is: Have I proven all of the
2 elements set out in the indictment beyond a reasonable
3 doubt. After you sit there and listen to all the evidence
4 if you feel that I, the State, has proven this case beyond
5 a reasonable doubt, then you return a verdict of guilty.

6 If you think we have not, you have a
7 reasonable doubt about the elements that are in the
8 indictment, then you find him not guilty. Now, you may
9 have other questions that are unanswered. If they don't
10 relate to the elements in the indictment, I don't have to
11 prove those because that's -- the indictment tells us what
12 we have to prove.

13 Any problem with that aspect of the law?

14 A No, sir.

15 Q You've never been a juror before; is that correct?

16 A Correct.

17 Q All right. In this questionnaire there's also this
18 area of agree, disagree, and had a bunch of statements.
19 Do you likely disagree or agree with these statements?
20 One statement says: Life imprisonment is more effective
21 than the death penalty. And you checked that you agree
22 with that.

23 Can you tell me what you thought about why
24 life imprisonment is more effective?

25 A You would have to take into consideration the history

1 of the defendant or the criminal, whatever the case may
2 be, how we did, how he's going to do, predict possibly
3 what his future is going to be, if he's worth striving for
4 something, you want to help him as much as you can.

5 Q If he's worth saving, if there's a possibility of
6 saving?

7 A Yes. You can always turn somebody around.

8 Q Do you think though -- and say I agree with you on
9 that -- well, I agree with anybody can be turned around.
10 Do you think it kind of depends whether they want to be
11 turned around?

12 A Yes, sir. Correct. I mean, you want to but they
13 don't want to accept them or what's going on. They think
14 that's the only choice to get out of it. It's not worth
15 it.

16 Q Now, there's another question that says the death
17 penalty is always justified for intentional murder; and
18 you checked that you agreed with that.

19 A Yes.

20 Q Now intentional murder as we talked about -- first
21 of all, murders in Texas are intentional. That's a
22 requirement for it to be murder. It has to be intentional
23 taking of another person's life.

24 So, not knowing that's what the definition
25 is, I mean, it would seem to say -- read in the question-

1 naire you believe that everybody who commits murder ought
2 to receive the death penalty in filling out this
3 questionnaire. I don't think you believe that.

4 A Yeah. Correct.

5 Q That's because capital murder is murder plus some
6 aggravated circumstance. Do you believe that everybody
7 who intentionally kills somebody ought to receive the
8 death penalty?

9 A If it's premeditated, that's a possibility.

10 Q A possibility not a certainty?

11 A Not certainty, no, sir.

12 Q There are no -- there is no one case -- there is no
13 one case in the law that I know of anywhere in the United
14 States where if you commit this crime, you automatically
15 get the death penalty. There is no automatic death
16 penalty.

17 Instead, the Legislature set up these two
18 questions here -- and let my see if I can finagle this
19 around there so you can see it better. And the decision
20 on life and death is determined by answering those
21 questions. And I don't want to jump too far ahead yet
22 because there are two parts to the trial.

23 First is guilt-innocence. You have to
24 determine has the State proven beyond a reasonable doubt
25 that the defendant intentionally took the life of a

1 certain person during the course of a kidnapping or as the
2 other paragraph that he intentionally killed one person
3 after having intentionally killed another person, okay,
4 during the one criminal episode.

5 A Okay.

6 Q So you'd had to have found either or both of those
7 before you found -- you'd had to have found the defendant
8 guilty of either or both of those before you'd ever get to
9 the punishment stage of the trial.

10 By the punishment stage of trial, you have
11 a lot of evidence. You have evidence what happened
12 before, during and after the commission of crime. You
13 have to decide whether this evidence proves to you the
14 defendant is guilty of capital murder as charged in the
15 indictment. Either murder kidnapping or murder during
16 murder.

17 Okay. You then go to the punishment stage
18 of the trial where you may hear additional information
19 about a defendant's criminal background, criminal history
20 or lack thereof, mental disability, any evidence about him
21 at this stage.

22 Your decision now is what punishment should
23 the person we have found guilty receive for the crime we
24 have found him guilty of, okay. And you decide that not
25 by voting life or death, but by answering the questions.

1 And depending upon how the questions are answered, depends
2 upon what punishment the Judge assesses.

3 The fact -- just for a moment, do you have
4 any doubts about your ability to participate in a process
5 whereby you would be called upon to answer these questions
6 knowing if you answered them a yes and no, then this Judge
7 would order the execution of the defendant sitting over
8 here on trial if that's what the law and the evidence
9 called for.

10 A If that's what the law calls for, yes, I agree with
11 it.

12 Q Okay. Some people come in and say: Well, I believe
13 in the death penalty and I think it's proper but I could
14 never make that type of decision. That's what the law and
15 evidence called for and calls for those answers to be
16 answered in such a way that death would result. You could
17 do that if that's what the law and evidence calls for?

18 A If that's what the law calls for.

19 Q Okay. Now, after you've heard the evidence about the
20 crime and after the punishment stage you hear evidence
21 about the individual, you begin to answer these questions.
22 And, as I say, there's not any situation where it's an
23 automatic death penalty.

24 In fact, the first question is automatically
25 answered no, unless we prove beyond a reasonable doubt

1 that the answer ought to be yes. Just like he's
2 automatically presumed to be innocent right now until we
3 prove, if we do, beyond a reasonable doubt that he's
4 guilty. If you're to vote right now whether Mr. Mamou is
5 guilty or not guilty of capital murder, you find him not
6 guilty because you heard no evidence.

7 So, if I ask you to answer Issue No. 1
8 right now, to Issue No. 1 you answer no because you
9 haven't heard any evidence. Okay.

10 A Correct.

11 Q Now, Issue No. 1 says: Do you find from the evidence
12 beyond a reasonable doubt there's a probability that the
13 defendant would commit criminal acts of violence that
14 would constitute a continuing threat to society?

15 It talks about first of all a probability.
16 As the Judge said it's not a possibility because
17 anything's possible. It's possible you could have won the
18 lottery last night on Wednesday night, possible win to it
19 on Saturday. Not probably either one of those things
20 going to happen.

21 A Really.

22 Q So, it's not just a possibility because things are
23 possible; and it's not a hundred percent certainty.
24 Otherwise, you would say there's beyond a reasonable doubt
25 that the defendant would. It wouldn't say probably it

1 would just say that he would.

2 Probably says something more than a
3 possibility and something less than a certainty, somewhere
4 in between that. "More likely than not" is a phrase
5 commonly used to describe probability. If I find based on
6 the evidence I heard more likely than not this person
7 would commit criminal acts of violence that would
8 constitute a continuing threat to society.

9 It used the words criminal acts of violence
10 not capital murder or murder, though if a person commit
11 them those are obviously acts of criminal violence. Could
12 be a robbery, burglary, shooting someone and missing,
13 hitting someone with fist as hard as you can, knock them
14 out or cause serious injury to them, anything that is
15 criminal and violent in nature.

16 So basically this is a continuing threat
17 question. And the question is as the defendant sits
18 before you that day you make the decision, do you find
19 from the evidence you heard beyond a reasonable doubt
20 there's a probability that he would commit criminal acts
21 of violence that would constitute a continuing threat to
22 society.

23 And if you believe that beyond a reasonable
24 doubt, you answer yes. If you don't, you answer no.
25 Okay. Some people say: Well, if I find a person guilty

1 of capital murder I will -- I'm always going to believe
2 there's a probability they'd commit criminal acts in the
3 future. Maybe so maybe not.

4 I mean the facts of the case itself may give
5 you enough to answer this question yes. In some cases and
6 other cases, it may not. I mean, you could have a person
7 you may have found out committed capital murder; but
8 they've never been in trouble with the law.

9 They are the Eagle Scout, choir boy,
10 straight A student. In other words, what they did was a
11 total aberration from the rest of their life. You may
12 say: Well, based on that I don't believe he'll be a
13 continuing threat to acts of criminal violence.

14 On the other side you may find a person in
15 and out of trouble all their life, been a constant
16 skipping in and out not necessarily going to the
17 penitentiary being convicted but someone in trouble all
18 around. You may think that person is a continuing threat.
19 Okay.

20 A Okay.

21 Q So, are you open to answer that question either yes or
22 no having already found a person guilty of capital murder?
23 Are you still open to answer yes or no depending on what
24 the evidence shows relating to that issue?

25 A Yes, depending on what the evidence shows.

1 Q Now, if you answer that question yes, the defendant's
2 going to receive the death penalty unless on Issue No. 2
3 you find there is a reason or reasons why he should not.
4 Issue No. 2 doesn't say beyond a reasonable doubt.

5 Instead it asks you: Do you find that after
6 taking into consideration all of the evidence including
7 the circumstances of the offense, the defendant's
8 character and background and his personal moral
9 culpability, I like to refer to it as his personal moral
10 responsibility for his crime, there are such mitigating
11 circumstance or circumstances, I like to refer to it as
12 sufficient reasons why this person should receive life as
13 opposed to death.

14 It gives you an opportunity to -- in fact,
15 I demand you go back and look through all the evidence.
16 It says to look at the evidence, the circumstances of the
17 offense. In other words, look back at the evidence about
18 the crime, the defendant's character and background that
19 would be what you heard at the punishment stage of trial
20 and then his personal moral responsibility.

21 Was he personally, morally responsible for
22 the commission of the crime, or was he a getaway driver,
23 you know. And then determine is there a sufficient
24 mitigating circumstance or circumstances, sufficient
25 reasons why this person ought to receive life as opposed

1 to death because the stage you're at when you get to that
2 question if you find him guilty of capital murder, you had
3 to have because you wouldn't find capital murder anyway,
4 and find he's a continuing threat to commit further acts
5 of violence he's going to get unless you find there is a
6 reason or reasons he should receive life as opposed to
7 death.

8 It gives you the opportunity to make that
9 last determination: Is he deserving of the death penalty
10 for all the things we know about him.

11 A Okay.

12 Q And if you think he's deserving of a life sentence,
13 you make that decision -- you answer that yes. I mean,
14 you answer that yes answer that question -- start over.

15 A It's yes or no.

16 Q Yes. There are sufficient mitigating circumstances,
17 right. And then if you find there's not a sufficient
18 mitigating circumstance you answer that no. If you answer
19 the first question yes and second no receive death
20 penalty -- first one yes and second one yes, he would
21 receive life in the penitentiary.

22 Do you think that's a good system we have
23 set up to make this determination?

24 A At that time -- that's probably our best system at
25 this time.

1 Q Now, let me give you an idea what Issue No. 2 is about
2 when looking at mitigation. Basically, my concept is it
3 requires you to go back and look at all the evidence and
4 decide whether or not that's mitigating.

5 In other words, does it give any reason
6 whether this person receive life not death. You may have
7 heard the defendant was high on drugs and alcohol when he
8 committed the crime. Somebody may say: Well, they think
9 that mitigates towards a life sentence. High on drugs or
10 alcohol, you do things you ordinarily wouldn't do.

11 Juror No. 2 may say: Wait a second. You
12 get high on drugs or alcohol, you still ought to be
13 responsible for your crime and may not get high on alcohol
14 or drugs and do something like this again. That's why I
15 don't think it's mitigating.

16 That's okay because the two people looked
17 at the evidence and come up with their own decision. They
18 waited and determined whether it's mitigating or not to
19 make that determination. The age of a person. This
20 person appears to be a young man. I say that I believe
21 that's mitigating. When you're young you do stupid things
22 and irrational things and when you grow older you don't do
23 those anymore.

24 Wait, a juror may say: A person this age
25 already done capital murder, the worse crime in the

1 system, no telling what he'll do 10, 15 years down the
2 road. I don't think it mitigates towards a life sentence.

3 Mental ability. Maybe there's evidence a
4 person is borderline mentally retarded or slow learner.

5 Well, I think that mitigates towards a life sentence.

6 Someone may say: I know people of his mental capacity in
7 work and neighborhood, church, everything, school,
8 whatever, they don't go out and commit capital murder.

9 I don't see why that has any affect on him
10 and whether or not that ought to mitigate towards his
11 case. I don't think that caused him to do what he did
12 okay. So, basically it asks you to go back and look at
13 the evidence and determine what affect it would have.

14 Just because there's mitigating
15 circumstances doesn't mean you answer yes. They should
16 be sufficiently mitigating whether you think life or
17 death is appropriate. Any questions about that?

18 A No, sir.

19 Q There are as I see it possibly --

20 MR. MCCLELLAN: I have two minutes left or
21 do I have any?

22 THE COURT: Go ahead.

23 Q (By Mr. McClellan) There are three types of evidence.
24 Direct evidence says you're an eyewitness. I saw this
25 happen. "Confession," somebody admits to the police or

1 someone else they committed the crime. And, three,
2 circumstantial evidence that tends to connect the
3 defendant to the commission of the crime.

4 Though it's not an eyewitness situation but
5 the law says they're are all evidence and can be weighed
6 by you as being of the same level. Direct evidence is not
7 giving any greater weight than confession evidence or
8 circumstantial evidence.

9 They all can be either good evidence or they
10 cannot be good evidence. You have to be the judge of
11 that, obviously. There can be circumstantial evidence.
12 Could be a situation where a person -- someone's house is
13 burglarized, a person found dead in the house and there's
14 a bloody fingerprint left.

15 That bloody fingerprint comes back to the
16 defendant. That's circumstantial evidence. And the print
17 in the blood of the victim, that's circumstantial evidence
18 that the person committed the crime not direct evidence.
19 Nobody saw it. Not a confession. Nobody confessed to it.
20 It's evidence.

21 Is that evidence you can consider
22 circumstantial evidence, that you would?

23 A Yes.

24 Q Would be able to consider and weigh --

25 A Yes.

1 Q Okay. My time is up and I appreciate your attention
2 and answering my questions and pass you to the other side.

3 THE COURT: Thank you. Mr. Hill.

4

5

EXAMINATION

6

QUESTIONS BY MR. HILL:

7 Q Thank you, Judge. Mr. Pena, I'm going to sit up here
8 because this thing is in the way and I don't want to have
9 you having to keep peering over and have to keep sitting
10 up in the chair.

11 A Okay.

12 Q First thing, I think you'll realize in terms of the
13 difference how I talk with you is that Mr. McClellan
14 obviously has to educate jurors as to the aspects of law
15 and the Judge has done that, also. I'm interested in you
16 educating me.

17 I'm going to speak with you about 20, 25
18 minutes and ultimately you'll be placed on a larger panel
19 of jurors and come back some point at the end of September
20 and select 12 people from that group of people.

21 This is my only opportunity to visit with
22 you. And, I guess, the thing to understand more than
23 anything is I hope you embrace what the Judge has said
24 to you during this presentation, especially the comments
25 that he made to you about we want to make sure that the

1 only person that is comfortable is you because in five
2 years down the road you're sitting there going, "Boy, you
3 know, I don't think that I've really made the right
4 decision," or "I don't feel like I answered the questions
5 as honestly as I could have." Then what have we
6 accomplished here?

7 Okay. We've all seen shows on TV where
8 something comes up 10 years later and jurors, you know --
9 television crews go back to the jurors 10 years later: If
10 you had known about that or known about this what would
11 your verdict have been.

12 I assure you the 12 people that sit on these
13 cases always feel very comfortable at the time with the
14 verdict. We want to make sure in arriving at that
15 verdict you've had the opportunity to express whatever's
16 on your mind no matter what the State would needs or
17 defense. That's the only way going way we're going to be
18 able to get 12 people here who will really listen to
19 everything and not prejudge it. Okay.

20 What did you think about coming down here
21 Monday filling out questionnaires knowing you were going
22 to come back on a case like that? What goes through your
23 mind?

24 A Basically until you go into -- get on a jury you
25 really can't take anything serious. I mean, all you can

1 do is listen, pay attention and sort it out whichever way
2 you want to do it. You can't get nothing serious because
3 you don't have a decision to make at the time.

4 Q I hope you realize this is probably the most important
5 of cases as far as the attorneys are concerned because
6 we --

7 A Yeah.

8 Q -- we are given an opportunity to evaluate you and
9 then you ultimately evaluate the case. We use these
10 questionnaires to hopefully give you an opportunity to
11 express some thoughts you have and give us an opportunity
12 to look through them ahead of time so we don't have to sit
13 here an hour and a half and ask you all these questions.

14 I want to ask you something, there was a
15 question maybe our environment which a child is raised
16 greatly influences how that person is developed and you
17 indicated you agree with that. What do you mean by that?

18 A All I can take is consideration. I've got three kids
19 of my own, okay. I can tell you the difference between my
20 oldest and my youngest, and there's a big age difference.

21 Q Right.

22 A Goes from 16 to 1-year-old. But what you show one you
23 have to adopt to that environment that the child is in. I
24 mean, I've got my middle child, my daughter that's in
25 honor society, in everything. So, I have to treat her a

1 little different and go into her environment because she's
2 much smarter than my oldest one which was an only child
3 three years.

4 A learning experience knowing which way to
5 go and which way and taking everybody, grandmothers' and
6 uncles' opinions which way you should raise your child.

7 Q Let me ask you what do you think your wife -- you and
8 your wife have done in terms of raising a child makes a
9 difference?

10 A Yes.

11 Q You're not afraid to claim credit for how your kids
12 come up?

13 A I have to claim for my wife and I.

14 Q Okay. Good. Also there was a question in your
15 opinion how illegal drugs affect a person, affect their
16 whole way of life mentally and physically.

17 A Uh-huh.

18 Q Personal experience or family members that have
19 suffered through those type of circumstances?

20 A I used to work at an oil refinery back a number of
21 years. I'm -- I have a medical retirement from this
22 place. I used to make gasoline. I was involved with
23 toluene which is thinner basically. All that I seen how
24 it affected me when I used to eat food.

25 At that time I lost my taste buds,

1 basically. And I know it affected me in some ways going
2 through many operations and things like that, coming back
3 where I used to dump salt and pepper to taste it. It's
4 only a little bit because my taste buds have come back.

5 Yes, I know drugs mess you up. I've seen it
6 in my work atmosphere. I work at a dealership and I deal
7 with a lot of people and I see the attitudes change. And
8 you can tell when people bring in cars say I need this
9 work done to my vehicle and in the car you can smell
10 they've been smoking a reefer cigarette.

11 Smoking is bad for you. I've gone through
12 being a real bad smoker. I can't stand it. So, you know,
13 but I've seen it. I've had a friend of mine get killed at
14 the refinery because of this stuff. Totally thrown them
15 in a new world. I lost one of my best buddies out there.

16 Q Okay. Okay. Let me approach something right away.
17 You read about this in newspapers, hear about it on TV and
18 almost invariably the comment made by the jury after the
19 case is over having to do with this defendant was trying
20 to give the excuse he had a bad upbringing and bad
21 childhood.

22 People are real tired of hearing that in the
23 context that's somehow supposed to excuse what somebody
24 did. Would you agree that there's only so much you can
25 attribute to childhood? Doesn't necessarily mean you're

1 going to commit murder. Doesn't mean you're going to do a
2 lot of things. I mean, do you have control over your
3 destiny?

4 A I believe everyone needs love, okay. And whether it
5 starts at the family, starts at the immediate family; but
6 it doesn't eliminate it to that particular atmosphere. I
7 mean you can get it from anybody.

8 Q But if there was evidence -- let me fast forward a
9 little bit here. Obviously, there are a number of
10 different factors that the jury, I should say, may be
11 called upon to answer. Would -- we're going to assume
12 for purposes of this discussion between you and me that
13 you have already made the finding that a person committed
14 capital murder one way or the other as it's alleged.

15 I guess the question a defense lawyer would
16 be concerned about is are you going to enter the penalty
17 phase of the trial feeling like, hey, there's nothing
18 anybody is going to show me about this particular
19 defendant that's going to cause me to feel like a life
20 sentence would ever be appropriate for somebody that's
21 committed capital murder.

22 I think that's kind of the most succinct
23 way to put it. Do you feel those kind of feelings
24 starting out? You committed capital murder. They killed
25 two people in the course of one transaction or kidnapped

1 somebody or attempted to kidnap somebody and caused the
2 death of that person, just doesn't deserve to live.

3 A No, I can't agree with that. No, I've seen it. I
4 used to do a lot of volunteer work for the United Way.
5 I've seen things like that.

6 Q Okay. Are you comfortable that in the event you
7 found that individual guilty of capital murder and you
8 now know that life in prison doesn't mean mandatory life
9 without parole, we only need to know whether you feel like
10 that would in any way affect your ability to answer these
11 two questions?

12 In other words, you'd answer those two
13 questions based on the evidence presented or not
14 presented to you.

15 A Correct.

16 Q You know there's going to be in any case the State
17 has a theory of their prosecution. None of us were
18 present at any alleged crime scene. If we were -- just
19 as Mr. McClellan told you, if you were you would be in
20 the witness stand talking to the 12 jurors.

21 A Correct.

22 Q Right. So, how do you think the State's theory of
23 the case develops? How do you think the prosecution
24 develops on a case like this? Just your general thoughts.

25 A They have to present the evidence. They're the ones

1 that got to prove their point more than anybody else.

2 Q Okay. Are you comfortable with sitting on a jury and
3 making a decision that could possibly have less to do with
4 finding the truth and more to do with the -- determining
5 whether the State has proven their case beyond a
6 reasonable doubt?

7 In other words, you could be sitting here
8 with 11 other people saying, you know, I feel like this
9 guy's probably involved in something. I feel like the
10 State has come real close, and I'm not liking the
11 defendant. I don't like anything I'm hearing.

12 But the question is not have you arrived at
13 the truth. The question is: Has the State proven this
14 case beyond a reasonable doubt based on all the evidence?

15 A If they supplied all the information, and I didn't
16 make a conscious decision of that, but you can't take
17 that into consideration not present at the time.

18 Q Right. Do you think that it would be a little bit
19 unfair for a juror to be sitting in these seats and
20 saying, you know, it just seems like they presented so
21 much evidence, called a hundred witnesses but, gosh, you
22 know something inside of me tells me they have not proven
23 this case that this defendant is guilty beyond a
24 reasonable doubt?

25 Are you going to be able to sit in judgment

1 of somebody and live with a decision like that even if you
2 have kind of thought there was evidence to suggest
3 somebody did do something wrong?

4 A I have to make a decision I have to live with.
5 Whatever goes through here I have to live with. Ya'll are
6 gone. I don't have to answer to ya'll. I got to live
7 with it.

8 Q That's right. Are you comfortable being able to make
9 a decision if the evidence didn't satisfy you that the
10 State had proven the case beyond a reasonable doubt, would
11 you be able to find an individual not guilty even though
12 you heard horrible evidence about people dying and all
13 the surrounding circumstances?

14 A If they didn't prove their point, in my opinion I
15 would say it's open to suggestion. I mean, I would have
16 to answer no.

17 Q Even if you didn't feel like you had ultimately
18 arrived at the pure truth of the matter?

19 A You have to consider everything that was presented.
20 It doesn't make any difference what I think of any --
21 either one of ya'll. Just because I don't like you that
22 means I'm going against you. I can't do that.

23 Q Right..

24 A It's not moral.

25 Q Okay. How -- would there be any difficulty on your

1 part listening to police testimony and calling it the way
2 you see it if you felt like a police officer was shading
3 the truth a little bit to butter the State's case and you
4 really didn't observe what he said or padding things a
5 little bit, are you going to hesitate to disbelieve that
6 officer?

7 A If it sounds a little fishy, then you can't consider
8 it.

9 Q Would that apply to any witness?

10 A Any witness.

11 Q Would it make any difference if the witness was called
12 by the State's lawyers or the defense lawyers?

13 A No, no difference.

14 Q Are we going to start out with a disadvantage if we
15 should call witnesses, offer testimony which we're not
16 required to do -- if we were to call witnesses, are you
17 the kind of individual going to say: Well, you know
18 they're defense witnesses. We can anticipate what they're
19 going to say?

20 A No.

21 Q Any more than you would say: Well, they're police
22 witnesses. We can anticipate what they're going to say.

23 A Basically you have to supply the evidence no matter
24 where it comes from.

25 Q You strike me as an individual pretty comfortable

1 making a decision?

2 A Yes.

3 Q You deal with people day in and day out?

4 A Correct.

5 Q What type of information do you think is important
6 for you personally to judge a person's believability or
7 their credibility? What kind of things do you take into
8 consideration?

9 A Basically I try to find out personality wise where
10 they sit, where they're coming from, how they talk, are
11 they comfortable talking to me.

12 Q Even if they're just yes and no answers, can you pull
13 any other information out?

14 A That's my job. I mean, that's the way I do it. I
15 run -- basically I run a Toyota division over there.
16 That's my job. I'm in customer relations. What's the
17 problem? Why are you so mad? One person in particular
18 may have a bad day. Everything has to go into
19 consideration.

20 Q What's the worse days, Monday?

21 A Usually Fridays.

22 Q Friday. Everybody trying to get something done by
23 the end of the week and not enough time to do it?

24 A Well, everyday's bad when you're not there. I'm the
25 only certified one that knows all the ropes. When I'm

1 gone, other people are doing my job. I have to go back
2 and straighten it out. Puts me busy which is good.

3 But I mean I get to find out more
4 information about people because I have to call them back
5 and ask what went on, were you okay with it, did you have
6 a problem, and that's how I got to know people and that's
7 how you get to know people and solve problems.

8 Q What do you think about the idea you could sit through
9 a trial, however long it takes, and the State presents
10 evidence and sitting on the edge of the chair and at some
11 point Mr. McClellan or Ms. Connors says the State rests.

12 How do you feel about the prospect not even
13 hearing from the defendant or any witnesses from the
14 defense and having to decide a case just based on what the
15 State has shown to you?

16 A They have the point to prove.

17 Q Okay.

18 A According to the law he's innocent if they don't prove
19 evidence enough to change my mind. They're ain't no
20 and's, if's, but's about it.

21 Q I'm looking over to Mr. Wentz to see what he wants me
22 to ask since we're so far apart. Do you have any
23 questions of me?

24 A No, sir. You got a job to do. I know what your job
25 is just like they have over there.

1 Q Okay.

2 A And this is the best way to get it done is through --

3 Q Are you -- only you know who you are, what makes you
4 tick. Although I think we got a pretty good feel. Is
5 there anything about you that I need to know that if I
6 were to tell Judge Burdette we would like to have
7 Mr. Pena return in a couple of weeks from now to be
8 considered for the final 12 people, is there anything
9 I've missed?

10 Is there anything I need to know that tells
11 me, "Hey, Wayne you're making a mistake putting him on the
12 panel?"

13 A As far as anything in particular?

14 Q Anything.

15 A I've gone through mostly everything from one extreme
16 to another. I've seen -- how can I say it? I've seen
17 good and bad. I used to do a lot of volunteer work for
18 United Way. I coached baseball, coached football. I've
19 coached girls and boys and seen kids broken homes and all
20 need tender love and care. Everything can be better if
21 everyone gets involved.

22 Q Fair enough. Any questions for me?

23 A No, sir.

24 Q Thank you, sir.

25 THE COURT: Thank you, Mr. Pena. In just a

1 second I'm going to excuse you. Before I do, I will
2 tell you we want you back here on Wednesday, the 29th
3 of September. I'm going to give you a piece of paper
4 about that in a second.

5 Between now and I guess it was three weeks
6 from yesterday when we get together, don't alter your
7 life one bit. Do your work things like you ordinarily
8 do them. Do your personal things like you ordinarily
9 do them. Even if you have a chance to leave, take the
10 chance and go.

11 The only thing that I ask of you between
12 now and the next time we see you is this: Please do
13 not talk about this case with anybody. Please do not
14 permit anybody to talk about this case with you. If
15 there should be any news media treatment about this
16 case, avoid it.

17 If there's anything about the case on
18 television, refuse to watch anything about this case.
19 If there's anything on the radio, refuse to hear it.
20 Anything about this case in the newspaper, refuse to
21 read it.

22 Mr. Pena, the reason for each of those five
23 restrictions is for the purposes of accomplishing the
24 same single common objective and that's this: To make
25 sure if you do become a juror in this case, the

1 decision that you do reach in this case whatever that
2 decision winds up being is based exclusively upon the
3 information that you received here within the
4 courtroom and not be affected in any way or
5 influenced by anything you might hear about the case
6 outside the courtroom.

7 Before you leave, sir, have you any
8 questions at all for me?

9 VENIRE PERSON PENA: No, sir.

10 THE COURT: For the two weeks -- if someone
11 needs to know where you've been the three days you've
12 been with us that will take care of this. This is a
13 note to remind you where we want you to be and when we
14 want you to be here. And we want you to be right
15 outside the door in the morning by 9:30 on Wednesday,
16 the 29th of September.

17 Any questions?

18 VENIRE PERSON PENA: No, sir.

19 THE COURT: Thank you very much, sir. With
20 that you're excused.

21 VENIRE PERSON: Free to go?

22 THE COURT: Yes, sir. Thank you for your
23 time.

24 MR. MCCLELLAN: Thank you.

25 MS. CONNERS: Thank you.

1 MR. HILL: Thank you, sir.

2 THE COURT: Ms. Scott. Mr. Hill gave you
3 back your five extra minutes.

4 (Prospective Juror No. 4, Ms. Joyce Scott
5 entered the courtroom.)

6 THE COURT: Come on in Ms. Scott. How are
7 you today, Ms. Scott?

8 VENIRE PERSON SCOTT: Just fine.

9 THE COURT: Please have a seat and make
10 yourself just as comfortable as you can be.
11 Ms. Scott, before we begin I'd ask you to remember
12 back to yesterday and those things we talked about
13 yesterday and add to that the things we talked about
14 this morning.

15 Out of everything that we have talked
16 about up to this point, do you find that you have any
17 questions at all for me?

18 VENIRE PERSON SCOTT: No.

19 THE COURT: Is there anything up to this
20 point, Ms. Scott, that we have not yet touched upon or
21 talked about that you feel as though we should because
22 it might have some bearing on your ability to be a
23 juror in this case?

24 VENIRE PERSON SCOTT: Not right now, no.

25 THE COURT: And if you would, please, ma'am,

1 when I'm asking the questions, it's a natural thing
2 for you to answer my questions I'm asking but these
3 other folks have to hear your answer. Keep your voice
4 up loud enough for them.

5 Is there anything, Ms. Scott, that you can
6 think of about your personal life, whether it might be
7 something about your professional life or might be
8 something about your health or something else that you
9 can think of that would in any way interfere with your
10 ability to be a juror in this case during the time
11 frame that we've talked about?

12 | VENIRE PERSON SCOTT: No.

13 THE COURT: Before we begin is there
14 anything at all that you would like to raise, any
15 questions you have, any comments you would like to
16 make?

17	VENIRE PERSON SCOTT: No.
----	--------------------------

18 THE COURT: I see that one of your three
19 favorite television shows is "Judge Judy."

20 VENIRE PERSON SCOTT: Yes.

21 THE COURT: Very well. I'll just turn the
22 page. Can you see how and why this is a little bit
23 different?

24 VENIRE PERSON SCOTT: Yes.

25 THE COURT: And I got to tell you the

1 truth, Ms. Scott, my father is 83 years old and
2 watches Judge Judy. It amazes him a son which he
3 has spent so much on education can't get things done
4 in 16 minutes like Judge Judy. It slightly drives him
5 crazy.

6 Ms. Scott, the questionnaire you filled
7 out and we all recognize you filled them out before
8 you ever talked to anybody about the case, before we'd
9 ever had a chance to visit; and therefore you, since
10 that time, have become aware of more of the rules
11 that. Exists you're aware of the pitfalls of filling
12 out the questionnaire.

13 And I say that for this reason. Maybe some
14 of the questions you were given in the questionnaire
15 the answer now might change because of what we have
16 talked about to this point, maybe they would not
17 change. Doesn't make any difference whether they
18 would or wouldn't. I want you to understand you
19 possess more information than you did when you filled
20 out the questionnaire.

21 And I ask and say that for this reason: On
22 Page 12, Question No. 58, the question asks: What are
23 your feelings about the death penalty? And your
24 answer was: If a person is found guilty, he or she
25 should get the death penalty.

1 Can you see based upon the conversations
2 that we have had, Ms. Scott, that death penalty is
3 simply an optional punishment?

4 VENIRE PERSON SCOTT: Yes.

5 THE COURT: Along with life sentence?

6 VENIRE PERSON SCOTT: Yes.

7 THE COURT: It is not a required punishment
8 according to the law.

9 VENIRE PERSON SCOTT: Yes.

10 THE COURT: Now, it may very well be you
11 might think to yourself if I were a juror in this case
12 and I found somebody guilty of capital murder, I would
13 answer those questions there in such a way the death
14 penalty be imposed.

15 If that's the way you feel, that's the deal,
16 nothing wrong with that. But I got to know if you
17 feel that way.

18 VENIRE PERSON SCOTT: If applying to these
19 questions --

20 THE COURT: Ms. Scott, you found somebody
21 guilty of capital murder for that reason would you
22 answer the questions in such a way that the death
23 penalty would be imposed?

24 VENIRE PERSON SCOTT: Always.

25 THE COURT: Thank you very much.

1 Challenging Ms. Scott?

2 MR. HILL: Yes, Your Honor.

3 THE COURT: You're excused. Thank you very
4 much. Thank you, ma'am. Hashagen, something like
5 that Neil. Frances.

6 (Prospective Juror No. 6 Ms. Frances
7 Hashagen entered the courtroom.)

8 THE COURT: If you will come straight
9 through there and walk over here. Pronounce your
10 last name.

11 VENIRE PERSON HASHAGEN: Hashagen.

12 THE COURT: I didn't know if it was Has or
13 Hash. Have a seat please, Ms. Hashagen. To begin,
14 let me ask you this: Out of everything we've talked
15 about yesterday as well as this morning, do you find
16 you have any questions for me?

17 VENIRE PERSON HASHAGEN: No.

18 THE COURT: Is there anything to this
19 point we have not yet talked about that you would
20 like for us to talk about because it might be
21 something -- might have some bearing on your ability
22 to be a juror in this case?

23 VENIRE PERSON HASHAGEN: Everything you've
24 brought up and discussed was very clear and open; so,
25 I think, you know, I have no problem.

1 THE COURT: Good. Is there anything at all
2 that you're aware of now, something may be about your
3 professional life, personal life, health or anything
4 you could think of that in any way might interfere
5 with your ability to be a juror in this case during
6 the time frame we've discussed?

7 VENIRE PERSON HASHAGEN: No, I don't see
8 anything.

9 THE COURT: In just a second the lawyers
10 are going to ask you some questions. Before they do,
11 there is a question that I have regarding your
12 questionnaire and you were asked the question on
13 Page 5 and was Question 5: Is there anything that
14 would prevent you from giving this case your full
15 attention if to last 10 days working, beginning
16 October 4, 1999?

17 You checked yes. As I took the question I
18 just now asked you, your answer was no, and I'm
19 assuming that your answer to the question in the
20 questionnaire has been resolved?

21 VENIRE PERSON HASHAGEN: Yeah.

22 THE COURT: Okay. Taken care of your
23 grandchildren?

24 VENIRE PERSON HASHAGEN: Uh-huh.

25 THE COURT: Okay. The lawyers in just a

1 second are going to visit with you, and they're going
2 to ask you some questions. They may very well want
3 to talk about some things with the State, and the
4 defense may very well talk about some other things.

5 Keep in mind, Ms. Hashagen, they're not
6 trying to commit you to anything, how you'll vote or
7 what you'll do or react. They're just -- these are
8 my words -- they just want to be satisfied that you're
9 armed with the information about the rules that can
10 come into play during the course of a trial like this
11 and that you'll play fair. Those are my words.
12 That's basically all it is.

13 VENIRE PERSON HASHAGEN: Yeah.

14 THE COURT: That you'll take everything into
15 account, all the testimony, all the evidence because
16 there's nothing that's automatic.

17 VENIRE PERSON HASHAGEN: No.

18 THE COURT: And you evaluate the evidence
19 however you see fit; but that you'll give everybody a
20 legitimate shot, judgement, logic and common sense.

21 Okay. With that, Mr. McClellan.

22 MR. MCCLELLAN: Thank you, Your Honor.
23
24
25

1

FRANCES D. HASHAGEN

2

having been sworn as a prospective juror testified as

3

follows:

4

5

EXAMINATION

6

QUESTIONS BY MR. MCCLELLAN:

7

Q Ms. Hashagen, my name is Lynn McClellan. Along with
8 Claire Conners, we represent the State of Texas in this
9 case. I want to just let you sit back and relax. I'm
10 going to ask you to share with us some of your opinions
11 and beliefs about certain aspects of the law and to find
12 out something you put in the questionnaire and get a
13 better chance to know you, what your thoughts are.

14

It says in here you work for the Harris
15 County clerk's office, I guess, for a number of years?

16

A Right.

17

Q Did you work in a --

18

A I was in probate.

19

Q Probate.

20

A Probate.

21

Q You never worked in criminal?

22

A No. No.

23

Q Okay. There's also a question in here about you made
24 mention your niece had been killed by her ex-husband?

25

A Uh-huh. Correct.

1 Q How long ago was that?

2 A About three or four years.

3 Q All right. And was he prosecuted for that?

4 A Yes, he was. That's over and done with. My
5 sister-in-law didn't want to get involved; so, I don't
6 know too much about the case. I know he was convicted,
7 and I think he got 35 years or something like that.

8 Q Okay. Do you think he was handled properly or not or
9 do you have an opinion?

10 A I don't have an opinion because I really don't know.

11 Q Nothing then, I guess, would affect your ability to
12 serve as a juror in a case like this?

13 A No.

14 Q All right. Let me go to another area of the
15 questionnaire where it says -- gives you choices about
16 assume that you're a juror to determine the sentence for
17 a defendant who's been convicted of capital murder. The
18 law gives you a choice of death or life imprisonment.
19 Which of the five you would choose, and you chose No. 2.

20 There are some kinds of cases in which I
21 know I could not vote for the death penalty even if the
22 law allowed me to but there are others which I'd be
23 willing to consider voting for it. Okay.

24 A Uh-huh.

25 Q In answering that question can you tell me what kind

1 of cases can you think of, anything in particular?

2 A No.

3 Q What kind of cases where you could not vote for the
4 death penalty even if the law allowed you to?

5 A No, depends on whatever I would be going against or
6 whatever.

7 Q If the law and evidence calls for the death penalty
8 regardless what type of crime was presented to you that
9 being -- assuming it was a crime that carried the death
10 penalty as an option, are you saying if the law and
11 evidence calls for the death penalty, that you could do
12 that regardless of the type of crime?

13 A Yeah. If the law required it, I think I could do
14 that.

15 Q What kind of cases come to your mind when you think
16 of cases where you think the death penalty ought to be
17 available as one of the forms of punishment?

18 A I think the killing of innocent people that have done
19 nothing on their part to cause this result.

20 Q Okay. Now, as the Court told you, capital murder is
21 murder plus some aggravated circumstance.

22 A Uh-huh.

23 Q What we have alleged in the indictment is murder
24 during the kidnapping in one paragraph and murder during
25 the course of committing another murder in another

1 paragraph. Those are two types of capital murder.

2 A Uh-huh.

3 Q If a person is found guilty of capital murder,
4 there's only two punishments. That's life or death. But
5 for the offense of murder, that is, the intentional
6 taking --

7 A Uh-huh.

8 Q -- of someone's life without any legal justification
9 for that. I mean it's not in self defense, not an
10 accident, and not connected with some other crime.

11 A Right.

12 Q For the intentional -- for a murder, death penalty
13 does not apply. The ex-husband killing his wife, the
14 death penalty doesn't apply unless it was also a burglary,
15 robbery, sexual assault, whatever the case may be.

16 A Right.

17 Q For those kind of cases where someone intentionally
18 killed someone but doesn't commit another felony to make
19 it capital the range of punishment as the Judge indicated
20 is five years to 99 years or life.

21 Are you able to keep your mind open in a
22 murder case not a capital murder case?

23 A Uh-huh.

24 Q But a murder case the full range of punishment is as
25 low as five years to as high as 99 years or life and wait

1 until you hear the evidence before determining what the
2 appropriate punishment should be?

3 A Yes.

4 Q Murder as I said then becomes capital murder when
5 it's connected with something else. What we have alleged
6 here is murder during the course of kidnapping or murder
7 during the course of another murder.

8 Do you have any doubts about your ability
9 to participate in a process whereby you would be called
10 upon to make decisions that you knew would result -- could
11 result in this Judge ordering the execution of the
12 defendant sitting over here on trial if that's what the
13 law and the evidence called for?

14 A I'd have no problem with that.

15 Q All right. Some people come in and say: Well, I
16 believe in the death penalty; but I could never make that
17 type of decision, you know. I not only don't want to be
18 put in the decision, I could never make a life or death
19 decision. I just couldn't live with myself if I did that.

20 I assume you don't fall into that category?

21 A No. No.

22 Q If that's what the law and evidence called for, you'd
23 do whatever the appropriate answer was whatever the law
24 and evidence showed?

25 A I would, yeah.

1 Q Okay. There's a question in here that asks if you
2 more likely agree or disagree -- and it says in here
3 that's not a question it's a statement and you check more
4 likely agree with this statement or disagree with it.

5 It says the death penalty is always
6 justified for intentional murder. Well, intentional
7 murder is the only kind of murder there is. There is no
8 unintentional murder. You intend to murder. That's the
9 definition: You intend to kill someone without any legal
10 justification. That is murder.

11 And for the murder you know now the death
12 penalty doesn't apply only 5 years, 99 years, or life and
13 death penalty only applies when it's murder plus some
14 other aggravated circumstance.

15 Do you still believe that the death penalty
16 ought to be available or that everybody who commits murder
17 ought to get the death penalty or do you believe that?

18 A I guess not everybody.

19 Q Okay.

20 A It depends.

21 Q Depends on the circumstance and what the evidence
22 showed?

23 A Right.

24 Q Okay. Now, there are people who come in and say:

25 Well, I think they ought to expand it. I think the death

1 penalty ought to apply to murder. That's not what the law
2 says. Now, what we're concerned about is setting aside
3 your personal opinion what you think the law ought to be
4 and can you follow it. Now, can you do that?

5 A Right.

6 Q Set aside any personal opinion and follow what the
7 law is now.

8 A Definitely.

9 Q All right. Because the bottom line is this: You're
10 going to be asked to take an oath to a true verdict render
11 according to the law and evidence. And what you'll be
12 taking an oath to do is whatever the law and evidence lead
13 you to do. That's what you'd do.

14 If it leads you to find somebody not
15 guilty because the State didn't prove their case beyond
16 a reasonable doubt, you find them not guilty. If the
17 evidence leads you to guilty and leads you to answer the
18 questions in such a way death results or answer the
19 questions in such a way death does not result but life
20 imprisonment, do that, follow whatever the law and
21 evidence leads you.

22 Any reason you could not do that?

23 A No.

24 Q Let me talk to you for a moment then about the
25 punishment stage of a capital murder case, keeping in mind

1 before you get to the punishment stage of a capital murder
2 case, you would have already decided that the person on
3 trial is guilty of capital murder. Otherwise, you don't
4 get to the punishment stage of trial.

5 A Right.

6 Q Okay. The person is not guilty, everybody goes home.
7 So, before you get to the punishment stage of a capital
8 murder trial, you would have had to find someone guilty of
9 capital murder in this case. Then you would have found
10 the defendant intentionally took the life of someone
11 during a kidnapping.

12 Okay. Intentionally killed someone during
13 committing the offense of murder or killing two or more
14 people during one criminal episode. If you find those to
15 be true and find the defendant guilty of either one or the
16 other, you'll be giving basically this verdict: We find
17 the defendant guilty as in the indictment.

18 Some people may think guilty of kidnapping
19 murder. Some people may think guilty of killing two
20 people in one criminal episode. They believe how the
21 indictment reads. Guilty of capital murder.

22 So, you could have six believe one way and
23 six believe another way, still guilty. Two different ways
24 alleged committing it.

25 A Uh-huh.

1 Q And if he committed one or both that way beyond a
2 reasonable doubt, he's guilty of capital murder. Any
3 problem with that aspect of the law?

4 A No.

5 Q If you find a person guilty of capital murder though,
6 you don't know what the punishment is going to be until
7 you go and answer these questions because there are no
8 cases -- there is no time if we find a person guilty of
9 that crime they automatically get the death penalty.
10 There is no automatic death penalty.

11 Instead you answer the questions and the
12 answers tell what the punishment ought to be. So,
13 hypothetically you could find somebody guilty of capital
14 murder, intentionally taking the life of another person
15 without any legal justification during the course of
16 kidnapping because of the answer to the questions, he may
17 get a life sentence as opposed to death.

18 Any problem with that?

19 A No.

20 Q Issue No. 1 will be the first question you get to.
21 You get to this question only after the opportunity to
22 hear more evidence at guilt-innocence, the first stage
23 of trial, when you decide if a person is guilty or not
24 guilty -- before you determine if he was guilty.
25 Otherwise, you don't get to punishment. You'll hear what

1 happened before, during and after the commission of the
2 crime at the punishment stage.

3 Now, you're going to be talking about the
4 individual who committed this crime and what punishment
5 he should receive for having committed that. You'll hear
6 evidence about the defendant's character, his background,
7 his criminal history, lack thereof, his mental abilities
8 or disabilities, his educational level, the kind of family
9 he grew up in, all kinds of evidence about that individual
10 to help you answer these questions.

11 So, what the answer ought to be, Issue No. 1
12 says: Now, if you find from the evidence beyond a
13 reasonable doubt -- that, of course, means the burden on
14 us to prove beyond a reasonable doubt that there's a
15 probability that the defendant would commit criminal acts
16 of violence that would constitute a continuing threat the
17 society.

18 They didn't use the word "probably" because
19 anything is possible. It's possible I might win the
20 lottery on Saturday but very unlikely. Didn't use the
21 word "certainty" because nothing could have -- but it
22 didn't use the word "certainty" which means a hundred
23 percent certain going to happen. It uses the word
24 "probability," between possibility -- something more than
25 possibility, less than certainty. Kind of more likely

1 than not.

2 So, the question is: Do you find from the
3 evidence beyond a reasonable doubt that it's more likely
4 than not that the defendant would commit criminal acts of
5 violence? That doesn't mean another murder or capital
6 murder. Those are, of course, acts of violence. But
7 hitting someone with your fist so hard causing bodily
8 injury, shooting someone and missing, doing a burglary,
9 robbery, sexual, anything that's criminal and violent in
10 nature.

11 So, the question is this: Now having heard
12 the guilt or innocence and the punishment, do you find
13 from all that evidence that there's a probability, more
14 likely than not, this person as he sits here today, that
15 day --

16 A Uh-huh.

17 Q -- would commit criminal acts of violence that would
18 be a continuing threat to society? And if you believe
19 that the evidence proves that beyond a reasonable doubt,
20 you answer yes. If we didn't prove beyond a reasonable
21 doubt, you answer no.

22 Any problem with that aspect? Keep your
23 mind open, answering it yes or no?

24 A Uh-huh.

25 Q Some people come up and say: If I have found someone

1 guilty of capital murder, the intentional taking of
2 someone's life during a kidnapping or killing someone
3 during a criminal episode, I'd always believe there's a
4 probability they'd be a continuing threat to commit
5 criminal acts of violence, be a continuing threat to
6 society.

7 Well, and that may be in certain cases.

8 A Right.

9 Q But there may be other cases where you find out the
10 person was a straight A student, a boy scout, alter boy,
11 you know pillar -- I mean the boy's a great kid, whatever
12 the situation, pillar of the community. They did a
13 capital murder. They did a horrible thing. But this act
14 they did was totally an aberration from the rest of their
15 life.

16 A Right.

17 Q You say there's nothing to indicate this person would
18 be a continuing threat and I'm going to answer it, no, he
19 won't be a continuing threat and receive a life sentence.
20 He doesn't make it go back and get to go there by
21 answering it no just means he doesn't get the death
22 penalty.

23 If on the other hand you find someone
24 committed capital murder been in and out of trouble, this
25 guy is a total waste. Sure, I mean there's not only

1 probably, there's a likelihood this guy will go out and
2 commit criminal acts of violence. It needs to be answered
3 based upon what the evidence may show. And can you see
4 it's conceivable to find someone guilty of capital murder
5 and still find he's not probability to be --

6 A Right.

7 Q -- a continued threat based upon what the evidence
8 may show about background and character. Do you
9 understand that?

10 A Yeah.

11 Q Now, if you answer Issue No. 1 yes, then the person is
12 going to receive the death penalty unless on Issue No. 2
13 you determine he should not receive that. It doesn't have
14 a beyond a reasonable doubt standard.

15 It says: Do you find that after taking
16 into consideration all the evidence including the
17 circumstances of the offense, that's what you heard about
18 in guilt or innocence, the defendant's character and
19 background; that's what you heard about in the punishment
20 stage of trial and his personal moral culpability, I like
21 to refer to it as personal responsibility, was he
22 personally responsible for the death that resulted?

23 Do you find then there are sufficient
24 mitigating circumstance or circumstances, I like to refer
25 to it as sufficient reasons why this person ought to

1 receive life as opposed to death; and if you find there
2 are reasons there and you find it is sufficient, you can
3 change your vote from death to life.

4 So, it gives you that opportunity to go
5 back and make sure the decision that you arrived at before
6 is the decision you want to stay with, gives you a chance
7 to give mitigation to him and leniency to him and give a
8 life sentence if you think it's appropriate if you think
9 sufficient evidence is there to do that.

10 Okay. Any problem with that aspect of the
11 law?

12 A No.

13 Q Let me give you an example of how it works: A
14 defendant high on alcohol or drugs when he committed the
15 crime. A juror may say when you're high on drugs and
16 alcohol you do things you ordinarily wouldn't do. That
17 mitigates. Juror No. 2 says: Wait a second. I don't
18 think it is. A lot of people get high on drugs and
19 alcohol and don't get capital murder. I don't see a
20 connection between capital murder and alcohol and drugs.
21 I don't think it's mitigating.

22 Two people come up with different opinions.
23 That's okay. Look at it, weigh it in your mind and decide
24 what affect to give that piece of evidence. If you think
25 it's mitigating, find it mitigating. If you think it's

1 not say it's not. Okay.

2 A Uh-huh.

3 Q Same thing with a person who's mental ability. Maybe
4 he's a slow learner. I think that mitigates towards a
5 life sentence. Some people say: Wait a second. I know
6 some people who have the same mental ability in church,
7 neighborhood, work, school, whatever, they don't go out
8 and commit capital murder. I don't see a connection
9 between that and the commission of capital murder. I
10 don't think that's a factor that ought to be considered in
11 determining whether or not he ought to receive life or
12 death.

13 So, two people again disagree; but they're
14 doing what the law requires which is weighing it in their
15 own minds and determining what affect to give him. Any
16 problem with that aspect of the law?

17 A No.

18 Q Can you see that? Are you open to the concept that
19 having found someone guilty of capital murder and then
20 having gone up to Issue No. 1 and found they're a
21 continuing threat to commit criminal acts of violence
22 that constitute a continuing threat to society, that you
23 still have to go through the process in Issue No. 2 and
24 look for mitigating evidence. I mean you may not find
25 any.

1 A Uh-huh.

2 Q But you got to commit to the process of looking. And
3 whether you do or don't find it, I don't know. That will
4 be for you to decide. And then if you do find it, is it
5 sufficient to change your vote. That's for you to decide
6 but you have to be able to go through this process and are
7 you open to that process?

8 A Yes.

9 Q Somebody may say: Well, how could you find something
10 mitigating if you found a person guilty and found they're
11 going to be a continuing threat? What in the world could
12 ever be mitigating?

13 I don't know the reasons for that. I don't
14 know that anybody does. They have to look through
15 everything heard and see if there's something. And if
16 there is, then give affect to it. If there's not, don't
17 give affect.

18 That's basically what the question is
19 asking you to do. Any problem there?

20 A No.

21 Q You understand that there is no automatic death
22 penalty. Just because you find someone guilty of capital
23 murder, you don't automatically give them the death
24 penalty. You have to answer the questions based upon the
25 evidence.

1 You have to reexamine the evidence because
2 at one time you're examining the evidence to determine did
3 he commit the crime as alleged in the indictment. Did
4 they prove all these elements yes or no. Yes, they did,
5 he's guilty.

6 Issue No. 2 doesn't say that: Now, do you
7 find that after you heard all that plus additional stuff,
8 you find there are reasons that you believe this person
9 would be a continuing threat or not, is there a
10 probability he'll be a continuing threat?

11 So, it's a different type maybe examining
12 some of the same evidence, look at it in a different
13 perspective. Any problem with that aspect?

14 A No.

15 Q If I told you the defendant is guilty of capital
16 murder, can you tell me what punishment he should receive?
17 That's the only thing you know he's guilty of capital
18 murder.

19 A No, I'd have to listen and then you'd tell me.

20 Q I'm not going to tell you anything else. He's guilty
21 of capital murder based on the law and the way it's set
22 up. Can you tell me what the punishment is going to be?

23 A No.

24 Q Because you have to know what the evidence is or the
25 facts?

1 A Right.

2 Q They could all be different.

3 A Right.

4 Q And not every capital murder case is the same like
5 every murder case is not the same. A mercy killing in
6 one case versus a drive-by shooting of a teenager on a
7 bicycle. Way different types of facts.

8 A Right.

9 Q You'd have to wait. Are you the type of person who
10 can wait and listen to the evidence and make your decision
11 upon the law and evidence?

12 A Yes. I don't see how you could make a decision
13 without knowing that.

14 Q You shouldn't be able to. Some people may be able to.
15 But you know you really shouldn't be able to. Do you have
16 any questions of me?

17 A No.

18 Q Okay. I appreciate your time, and I'll pass you to
19 Mr. Hill.

20 THE COURT: Mr. Hill.

21

22 **EXAMINATION**

23 **QUESTIONS BY MR. HILL:**

24 Q Good morning, ma'am. I sit up here because that
25 thing is in the way. This gives us a chance to look at

1 each other --

2 A Okay.

3 Q -- and talk. One of the first things that I want to
4 talk about, probably the most important thing to talk
5 about is for you to understand that this process helps all
6 of us determine whether or not you proceed from today to
7 some time in the future and actually make the jury.

8 A Uh-huh.

9 Q You're not on the jury, yet.

10 A Right.

11 Q We want to make sure that as jurors you understand
12 that it's done this way. It's done privately,
13 confidentially to ensure those people tell us how they
14 feel about anything that could affect the case.

15 You could imagine what it would be like
16 sitting in this chair Mr. Mamou is sitting in having to
17 look at stranger after stranger that comes up and explains
18 how they feel about things not knowing whether this person
19 has shared everything they have to tell us, whether
20 they're holding anything back, whether they feel maybe a
21 little bit of subtle pressure to pass the test.

22 We're not here for you to pass the test.
23 We're here for you to express honestly how you feel about
24 any topic that may come up. Of course, a lot of the time
25 people -- and you said it a couple of times -- whatever

1 the law requires.

2 The law requires nothing of you except to
3 tell us how you honestly feel and if there are topics
4 especially sensitive for you, things you think you might
5 feel strongly about. All we can ask is you share it with
6 us, okay.

7 A Uh-huh.

8 Q There is no commitment to the process. There is no
9 commitment that you have to answer these two questions if
10 you feel as though you're unable to or if there's anything
11 that kind of causes you to feel like there are automatic
12 answers, okay.

13 What do you think about sitting in the
14 jury assembly room filling out a questionnaire, knowing
15 that you're going to be called back on a case that
16 obviously the allegations against Mr. Mamou is he
17 committed capital murder. What goes through your mind as
18 a prospective juror? What are you thinking about?

19 A Some of the questions what relevance it has to the
20 particular case, you know, like the personal questions of
21 your favorite TV programs and I'm not a TV buff. I fall
22 asleep watching TV in most cases. I do enjoy reading
23 trial cases being that I worked in Probate Court. So,
24 that sort of stimulates and just to see how the different
25 characters evolve.

1 Q Did you ever sit in and watch the trials over there
2 where you're the courtroom clerk?

3 A Yes.

4 Q What was the best case you had?

5 A Golly, been retired for, what, since '95 and --

6 Q Did you deal with De Part Nova case? Was that one?

7 (Phonetically.)

8 A That always came up periodically.

9 Q Still there?

10 A Yeah, we had that one and then, golly, the old
11 millionaire senile who had the young movie star wife, now
12 the buxom and the oilman.

13 Q Buxom one.

14 A Everybody went crazy over that, yeah.

15 Q She's reinvented herself recently.

16 A Yeah.

17 Q When Mr. McClellan was trying to talk to you and
18 distinguish capital murder from what is not capital
19 murder -- I don't want to say it's ordinary murder because
20 it's obviously very serious -- and he asked you about the
21 situation where your niece was killed.

22 A Uh-huh.

23 Q How do you feel about sitting on a jury potentially
24 and judging a case like this? Does that make you feel a
25 little uneasy, uncomfortable? Is it something that you

1 hope you will be able to do? And, I mean, "I hope that I
2 can make that jury?"

3 What are your feelings?

4 A Well, I feel, yeah, it's a part of the process that I
5 came down to be a juror and if I'm picked, I'm picked. .
6 And then I have to do what the law requires me to do and
7 to listen and to pass judgment how I feel everything's
8 been presented that should be.

9 Q Are you comfortable with that?

10 A Yes.

11 Q Good. We wouldn't want people that are uncomfortable
12 or feel too nervous about it. Some people are not in any
13 position to judge another human being. That's left to a
14 higher authority.

15 You're comfortable judging people and making
16 a decision based on everything that's presented to you?

17 A Right.

18 Q Okay. Are there any types of cases that come to your
19 mind that you feel that you could not sit and judge fairly
20 maybe just because of the nature of the type of case?

21 A Offhand I couldn't.

22 Q Okay. Because as Mr. McClellan was talking with you,
23 you know you said the law requires you to set aside your
24 personal beliefs or opinions. And I always wondered where
25 people put those personal beliefs or opinions. You're

1 products of your upbringing, work, relationships. And I
2 always wonder why people are so quick to agree with that
3 to say: Yes, I can set that aside.

4 And I like to ask people whether or not
5 there's a particular type of case so horrible they really
6 would say: You put me with a child rapist or something I
7 don't think I could be fair. Just going to have too much
8 of a feeling because of the alleged victim. I just
9 couldn't sit in judgement.

10 So, you don't have any of those kinds of
11 feelings?

12 A I don't think I do.

13 Q Okay. I feel you know best. We don't know you. We
14 take 20 minutes to visit with you a little bit and try to
15 figure out what makes you tick and decide whether or not
16 you get the recall to come back in a couple of weeks from
17 now.

18 One of the reasons we use the questionnaire
19 and probably are some questions there that really tend not
20 to be relevant maybe not for you maybe for the next juror
21 that comes along and answered that particular question
22 that may be relevant. I went through and there's a couple
23 I want to visit with you.

24 A Sure.

25 Q First one is -- first we have talks about anyone come

1 from a neglectful or abusive childhood and please circle.
2 Your response, generally disagree. What did you mean by
3 that?

4 A If they have the desire to, they can overcome. But
5 if they -- if somewhere in their background somebody
6 hasn't reached them with something --

7 Q Right.

8 A -- to maybe put something in their mind that, hey,
9 there is a light that I can change if I make an effort to.
10 This is the way I feel that you still have this ultimate
11 choice.

12 Q But if a person's upbringing is such they've not been
13 giving any clues or signals, would that be reflected in
14 your statement that you generally disagree that anyone who
15 comes from a neglectful or abusive childhood?

16 A Right.

17 Q Okay. Let me clear something up right away because
18 the way that question is phrased some jurors will likely
19 tell us: Oh, so what the defense is relying on here is
20 the kid had a bad upbringing and that's going to explain
21 everything and excuse everything that may have happened,
22 and that's not what's asked in this question.

23 And I want to ask you in all fairness what
24 is your response when you see things on the news or read
25 in the newspaper that the defense has offered testimony in

1 a trial for a jury's consideration that a person had a bad
2 upbringing, are you offended by that?

3 Do you think that has nothing to do with
4 the case? Either a person does something or don't do it.
5 Doesn't matter what they did or brought them to the point,
6 you either did it or don't do it. How do you feel?

7 A I think each case is individual and you'd have to --

8 Q Got to look at all the factors?

9 A Yeah. Yeah.

10 Q Okay. Do you agree there can be cases that a great
11 deal of violence can occur? People can be killed, but the
12 circumstances of how the killings took place play a big
13 part in the ultimate decision we make.

14 A Uh-huh.

15 Q Do you think that especially can be important if you
16 believe beyond a reasonable doubt that the person should
17 be held responsible for capital murder? And then you get
18 to the punishment stage of trial. Do you still think the
19 circumstances of how a particular capital murder was
20 committed could play a big role in your decision-making
21 process at the punishment stage?

22 A Definitely.

23 Q So, you're not one of these people that, hey, somebody
24 takes the life of two people intending to kill them,
25 there's no hope for that person ever getting a life

1 sentence out of me based on my answers to questions.

2 You're not like that?

3 A Uh-huh.

4 Q Now, it's necessary I ask questions that are perhaps
5 a little bit more probing. The State wants to make sure
6 you can follow the law. I have no question you could
7 follow the law. You would have thrown the jury summons
8 away if you didn't want to follow the law.

9 I don't want to apologize for asking the
10 questions. I hope you understand why I do it. I hope
11 you're again sitting in Mr. Mamou's chair, you would want
12 somebody to be asking some questions thoughtful questions
13 in asking that you kind of think things through a little
14 bit before answering questions.

15 Okay. One of the other questions that was
16 asked is: In your opinion how do illegal drugs affect a
17 person? You said they change personality and character.
18 Have you seen people that you've personally known or just
19 being down at the court system? Is that kind of pretty
20 obvious to you?

21 A Yeah.

22 Q And another question asks: Would an individual's use
23 or sell of drugs prevent them from relying on any defense
24 available to other members of society? You put no. So,
25 you do not believe that if there was evidence presented

1 that a person either was a drug user or sold drugs, that
2 that would preclude them or prevent them from having
3 certain defenses available to them in this particular type
4 of case?

5 A Uh-huh. I think we're all entitled to that.

6 Q Okay. This is not the circumstances here. We're not
7 talking about this case. But would you agree with me the
8 general proposition -- this is one of the bell ringers --
9 people hear these kind of things and usually get them
10 pretty upset. Could you imagine a situation where a
11 person was a five-time ex-con, most terrible person in the
12 world and finally released on parole still possibly having
13 to rely upon self-defense in that case?

14 In other words, the fact that a person had
15 been in all sorts of trouble, do you think you could sit
16 as a juror and evaluate whether or not a particular case
17 in history that person actually acted in self-defense? In
18 other words, he shouldn't be convicted of this crime
19 because he legitimately had a defense.

20 Do you think you could?

21 A I think so.

22 Q You see how when you put the preface to it is a
23 horrible person?

24 A Right

25 Q Been in all sorts of trouble and here he is trying

1 to tell us it's self-defense. A jury might be called upon
2 to make this decision; and if the jury believes a person
3 acted in self-defense, it's the law to find the person not
4 guilty because the State didn't prove the case beyond a
5 reasonable doubt.

6 A Right. Right.

7 Q Now, here's one that bothers me: In your opinion what
8 is the best argument for death penalty in our society?
9 And your response was: If you take another's life, you
10 should be prepared to lose yours.

11 A Well, it's responsibility of your actions.

12 Q All right. Does that necessarily mean that if you
13 take another person's life, you must always forfeit your
14 life in return?

15 A No. No, just that you're aware that you're
16 responsible for your actions.

17 Q Correct.

18 A And whatever comes down comes down.

19 Q And in terms of whatever comes down it could be
20 anywhere from life in prison to the death penalty if it's
21 capital murder. And as the Judge pointed out if you
22 believe that something less than what the State has
23 attempted to prove to you in a case of capital murder is
24 proven, murder or maybe that proof there was a kidnapping
25 but not a murder.

1 A Uh-huh.

2 Q Okay. You're comfortable with being able to evaluate
3 each case on its own facts, on its own information?

4 A Uh-huh.

5 Q And you would not automatically rule out a particular
6 punishment?

7 A No.

8 A You know that Mr. McClellan and Ms. Conners are
9 sitting there saying: Well, if we don't satisfy a jury
10 beyond a reasonable doubt that the defendant committed
11 capital murder, and now this jury is deciding punishment,
12 let's say, on a lesser charge of murder, you know, is she
13 telling us she would never consider 99 years or life and
14 clearly your answer is, no, you would consider that full
15 range.

16 I'm sitting on the other end of the table.
17 Are you already predisposed to saying, hey, if this is a
18 murder case, I'm never going to even consider -- not that
19 you have to give it -- not even going to consider the low
20 range of the punishment. You're comfortable considering
21 everything?

22 A Uh-huh.

23 Q Okay. The last question that sent a little chill up
24 my back, and I hope you don't mind me visiting with you
25 like this.

1 A No. No.

2 Q I want you to understand because I'm ultimately going
3 to ask you a question that causes you to tell me exactly
4 what I should do with regard to asking you to come back or
5 not.

6 The question was: Do you believe that
7 mitigating evidence concerning a capital murder
8 defendant's background should be considered in deciding
9 whether or not he or she should receive the death penalty.
10 And you answered no.

11 Okay. And I guess I'll ask you this: Do
12 you have -- what is your feeling or what is your thought
13 process when you hear the words mitigating evidence? What
14 does that really mean to you personally?

15 A Evidence that's been presented or that they're handing
16 out.

17 Q Okay. Is there another word you would like to
18 substitute for mitigating? Different jurors use different
19 words they're a little more comfortable with.

20 "Mitigating" is really a legal phrase. Is there a word
21 that comes to your mind?

22 A What was the question again? Reread that.

23 MR. HILL: May I approach the juror?

24 Q (By Mr. Hill) Might I show you the questionnaire?

25 A Yes. I think at this point I was just ready to get

1 the whole thing done and out.

2 Q Okay. That's fine. And if you feel like that answer
3 does not exactly reflect what you feel --

4 A Yeah, I just don't know --

5 Q Okay.

6 A -- what I would feel on that.

7 Q Okay. Because you understand that's when
8 Mr. McClellan was talking to you, he was asking you on
9 Question No. 2 here, the penalty stage whether or not you
10 would take into consideration any mitigating evidence.
11 Obviously, in reading this answer on your questionnaire --

12 A Right.

13 Q -- it seemed to conflict with what you said in court.

14 A Right. I agree with -- I guess I don't have the true
15 definition of mitigating.

16 Q Okay. That's why we want to make sure you do
17 understand it because you could understand, I hope --

18 A Definitely.

19 Q -- that from reading this answer right here you're
20 telling me I'm not going to consider mitigating evidence
21 if I consider life or death. So what did -- what would be
22 the point of me serving on the jury.

23 A That is not a true answer for me.

24 Q Good. That's fine. Because I do want you to
25 understand that when we are talking about capital

1 murder --

2 A Uh-huh.

3 Q -- we are not talking about a situation where somebody
4 has acted in self-defense. We are not talking about an
5 accidental killing because --

6 A Right.

7 Q -- because if any of those circumstances exists and
8 you believed they existed, your responsibility under oath
9 would be to find the person not guilty. So, we want you
10 to be fully aware that if you're at this stage of trial
11 answering these two questions, you already found the
12 person guilty of capital murder.

13 A Right. Uh-huh.

14 Q State asked you whether or not you believe that when
15 you talk about society, you include prison society; and
16 the Judge even mentioned it may not be community that
17 which live in part of overall society.

18 A Right.

19 Q Do you believe that that society in prison is the same
20 as your society that you live in? In other words, do you
21 think the same rules apply in prison society that apply in
22 your free society?

23 A To a certain degree I guess they do.

24 Q Are there certain rules that are very different about
25 prison society in terms of what a person can do?

1 A Yes.

2 Q It's very restricted?

3 A Yeah.

4 Q Very restricted. Have you ever watched any television
5 shows or specials regarding the Texas Prison System in
6 particular?

7 A I don't think so.

8 Q Okay. Do you have a general feel about the Texas
9 prison system good, bad or indifferent?

10 A Don't really know. Haven't had the occasion to.

11 Q Never visited there on a personal basis?

12 A No. No.

13 Q Okay. I'm going to ask you this one question, unless
14 Mr. Wentz has anything specific he would like to ask you,
15 Mr. Wentz and I are going to be called upon to decide
16 whether this woman is an individual that we should trust
17 to sit in judgment of our client just like the State's
18 asking themselves the same question.

19 Only you can tell us if there's anything,
20 whether in the deepest recesses of your mind or something
21 we completely missed because, quite frankly, if it's not
22 shared with us now and you get on the jury and pops up for
23 the first time back there when you're deliberating, it's
24 too late to do anything about it.

25 A Uh-huh.

1 Q I always ask jurors if there's anything at all that
2 you could tell me about yourself that would dissuade me
3 from saying we would like you to come back at the end of
4 the month. Is there anything at all you can think of?

5 A No.

6 Q Do you have any questions of me?

7 A No.

8 Q Okay. I hope the process wasn't too painful for you.

9 A No, it really wasn't.

10 THE COURT: Okay. Ma'am, in just a second
11 I'm going to excuse you. Before I do, I will tell you
12 we want you back on Wednesday, September 29th at 9:30.
13 I will give you a paper about that in just a second.

14 Between now and when we see you again which
15 I believe to be three weeks from yesterday, please
16 don't alter your lifestyle one bit for us. You do
17 whatever it is you ordinarily do. Do it exactly the
18 same as you ordinarily do it. If you have a chance
19 even between now and when we get together again to
20 leave town take the chance and go.

21 The only thing we ask of you between now
22 and when we see you next is this: Please do not talk
23 about this case with anybody. Do not permit anybody
24 to talk about this case with you. If there is any
25 news media treatment regarding this case, please avoid

1 it.

2 Anything about this case on the television,
3 refuse to watch it. Anything about this case on the
4 radio, refuse to hear it. Anything about this case
5 in the newspaper, refuse to read it.

6 And the reason for each of those five
7 restrictions is for this purpose: If you do become
8 a juror in this case, the decision that you reach --
9 whatever this decision winds up being -- must be based
10 exclusively upon the information you receive from
11 within the courtroom and cannot be in anyway affected
12 or influenced by anyone outside the courtroom.

13 That's why we try to keep these, as you
14 know, pristine as we possibly can. The rules are a
15 little bit different here. If Mr. Hashagen needs to
16 know where you been, that will take care of that. If
17 you need a reminder of where and when we want you to
18 be next Wednesday -- that's not true, Wednesday the
19 29th at 9:30, just right out here where you were this
20 morning and that day. My best guess if we get started
21 on time we ought to be through by 12:00.

22 VENIRE PERSON HASHAGEN: And this will be
23 finished?

24 THE COURT: Everybody will know for certain
25 whether or not you're a juror.

1 VENIRE PERSON HASHAGEN: Okay. Thank you.
2 That sounds good.

3 THE COURT: I knew just as soon as I said
4 that -- just don't know why.

5 Ms. Amie. I think that is the
6 pronunciation.

7 (Prospective Juror No. 10, Alejandra Solano
8 Amie entered the courtroom.)

9 THE COURT: Ms. Amie, if you would please,
10 come right over here and have a seat. Please make
11 yourself comfortable, and did I pronounce your last
12 name correctly?

13 VENIRE PERSON AMIE: Amie.

14 THE COURT: Amie?

15 VENIRE PERSON AMIE: That's correct.

16 THE COURT: Okay. Ms. Amie, before we
17 begin I would ask you to remember back to yesterday
18 and all of the things we talked about yesterday. To
19 that add the things we talked about this morning; and
20 out of the collection of everything that we have
21 talked about to this point, do you have any questions
22 at all for me?

23 VENIRE PERSON AMIE: No.

24 THE COURT: Is there anything, ma'am, that
25 up to this point that we have not yet talked about,

1 you feel as though we should talk about that we should
2 talk about because it might have some bearing or
3 influence on your ability to be a juror in this case?

4 VENIRE PERSON AMIE: Not that I could think
5 of.

6 THE COURT: Is there anything at all, ma'am,
7 that you're aware of now that could, whether it be
8 something about your personal life, professional life,
9 your health or something else that you feel in any way
10 would interfere with your ability to be a juror in
11 this case during the time frame that we've talked
12 about?

13 VENIRE PERSON AMIE: No.

14 THE COURT: Can you see from our
15 conversations yesterday and today that in this
16 process there is nothing that is automatic? Because
17 one thing occurs that does not automatically lead to
18 another conclusion. For example, because someone is
19 found guilty of capital murder, that does not mean
20 they should receive capital punishment.

21 VENIRE PERSON AMIE: Right.

22 THE COURT: May very well be because of
23 facts of the case, that would be a case-by-case
24 basis. And life is an option in a capital murder case
25 just as the death penalty. Guilty and not guilty are

1 equally options at the outset.

2 And do you have any questions at all about
3 that process or anything that we've covered so far?

4 VENIRE PERSON AMIE: No.

5 THE COURT: Okay. The lawyers are going
6 to visit with you for a while. And quite honestly,
7 ma'am, all they're going to be interested in is being
8 satisfied with themselves that you are satisfied
9 with yourself that based upon what you know, you could
10 take any one of those 12 chairs and listen to the
11 testimony in this case listen to all the testimony
12 and evaluate it however you see fit and just play fair
13 and come up with what you think is the right result
14 understanding that your job isn't to please either
15 side.

16 Your job isn't to please me. Your job is to
17 be satisfied five years from now when you wake up one
18 morning and say, "I did the right thing," whatever
19 that may be. Does that sound like you?

20 VENIRE PERSON AMIE: Yes, I think so.

21 THE COURT: Mr. McClellan, if you would
22 please.

23

24

25

1 **ALEJANDRA SOLANO AMIE,**

2 called as a prospective juror testified as follows:

3
4 **EXAMINATION**

5 **QUESTIONS BY MR. MCCLELLAN:**

6 Q Ms. Amie, my name is Lynn McClellan. Along with
7 Claire Connors, we represent the State of Texas in this
8 case. I am -- I want to you sit back and relax and I
9 want to ask you to share with us, if you will, certain
10 beliefs about aspects of the law.

11 I want to go through a couple of questions
12 and go through your questionnaire and ask you some more
13 about some of your answers there. First of all, though,
14 what kind of cases come to mind or crimes come to mind
15 when you think of cases you believe the death penalty
16 ought to be available as one of the forms of punishment?

17 A I guess the first ones come to mind those cases
18 extremely violent where there was a lot of maliciousness
19 and the way the person died. You know, not just an
20 accidental shooting or shooting out of passion but
21 something almost evil, I guess, or mean-hearted.

22 Q Right. Right. The Court told you that capital murder
23 in the State of Texas is murder plus some aggravated
24 circumstance. For the offense of murder without any
25 aggravating circumstance, the range of punishment is from

1 five years to 99 years or life.

2 Now, murder is the intentional taking of
3 another person's life without any legal justification, not
4 self-defense, not accidental. When you intend to kill
5 someone and you do so for no reason, the offense it's
6 without any other crime being committed at the same time,
7 the death penalty does not apply.

8 Instead, you have the range of punishment
9 from five years to 99 years or life.

10 A Right.

11 Q For the offense of murder, can you keep your mind open
12 to the full range of punishment from five years to 99
13 years or life and wait until you hear the evidence and
14 decide where within that range the penalty ought to be
15 assessed?

16 A Yes.

17 Q Okay. Now murder becomes capital murder when it's
18 connected with something else. We have alleged in the
19 indictment murder during the course of kidnapping,
20 kidnapped someone and kills them during the process.

21 Also alleged murder during the course of
22 committing another murder, killing two or more people
23 during one criminal episode.

24 Okay. Other types of capital murder are
25 murder during a robbery, murder during a burglary,

1 murder during a sexual assault, killing a police
2 officer in the line of duty, killing a child under a
3 certain age are the kind of cases Legislature said the
4 death penalty ought to be available for.

5 Do you agree that those kinds of cases the
6 death penalty ought to be available as one of the forms of
7 punishment for those types of cases?

8 A You mean as far as it applies to capital murder?

9 Q In other words the law says -- the reason I'm using
10 the word "available" is because there is no crime where
11 the death penalty is automatic. It's not automatic for
12 anything. It's only one of two possible punishments,
13 life in prison or death penalty and only available when
14 there's murder plus some other crime being committed.

15 Do you have any problem with that aspect
16 of the law?

17 A No. Just kind of seems strange that stipulation. I
18 didn't realize that until the Judge mentioned it this
19 morning.

20 Q Right. Some people think it ought to be included in
21 murder, it's without during a burglary, without doing --
22 just a murder itself ought to have available the death
23 penalty as one of the forms of punishment depending upon
24 the facts of that particular murder.

25 Is that the way you feel?

1 A I would tend to agree with that.

2 Q You understand that's not what the law is?

3 A Right. Right.

4 Q What you do as a juror is take an oath to a true
5 verdict render based upon the law and evidence.

6 A Right.

7 Q And if I were to be able to prove a murder and didn't
8 prove the underlying aggravated kidnapping or prove a
9 murder but only didn't prove the underlying murder find a
10 person not guilty of capital murder and guilty on the
11 murder?

12 A Right.

13 Q And you would be able to do that?

14 A Right.

15 Q Now, do you have any doubts about your ability to
16 participate in a process whereby you would be called
17 upon to make decisions? In other words, answer these
18 questions over here knowing that in answering those
19 questions you would be ordering this Judge to order the
20 execution of the defendant sitting over here on trial if
21 that's what the law and evidence called for?

22 A I would think I would not have that problem.
23 Certainly never been in this position before and not the
24 kind of thing you think about that you'd have to do. But
25 just over the course of the last few days, you know, I'm

1 comfortable that I could go into what was presented to me
2 and decide accordingly and keep everything else out of it.

3 Q Can you do that?

4 A Yes.

5 Q Some people come in and say: There's nothing wrong
6 with that. I believe the death penalty is proper
7 punishment in certain types of crimes. But I've thought
8 about it. I, myself, I could never make that type of
9 decision.

10 I couldn't live with myself having to make
11 that decision or my religious beliefs conflict with me
12 making that type of decision or my personal moral or
13 ethical beliefs keep me from making that type of decision.
14 I'm not saying we shouldn't have it. I'm saying I'm not
15 the person to make that decision.

16 My question to you: If that's what the law
17 and evidence called for -- if that's what you believe you
18 know the evidence and law called to happen, could you
19 participate in making that type of decision?

20 A Yes.

21 Q All right. I want to talk to you for a little bit
22 about some of your answers in the questionnaire and kind
23 of feel out some of that. You're asking about articles
24 that you may have read or TV that you watched relating to
25 death penalty and you indicated you like to read, I guess,

1 true crime books?

2 A Not necessarily true crime books but crime books.

3 Q Courtroom type books, stuff like that. What is --
4 what are some of the books you read? Do you recall any of
5 the names?

6 A I think the last one I read was called Messiah. It's
7 about a serial killer. I read books by Allan Folsom wrote
8 The Day After Tomorrow something an arch bishop.

9 Q Anything about that interest or anything in reading
10 that you think would have an affect on you being a juror
11 in this case?

12 A No, I just like to read them. The time goes fast and
13 can't wait to see what happens.

14 Q Okay. You also indicated that your brother-in-law
15 works in the Sheriff's Department?

16 A Uh-huh.

17 Q Is he a patrolman or do you know what he does?

18 A To be honest with you we're not too close. I don't
19 know what he does.

20 Q Nothing about that affect your ability to be a juror
21 in this case?

22 A No.

23 Q You said you think your husband may have applied for
24 a law enforcement job some years ago. Did you ever go
25 ask him about that over the night?

1 A No. And when I said that on the questionnaire, it was
2 weird, he just mentioned it the other day something about
3 he had applied. But, I guess, he backed out or something,
4 I don't know.

5 Q You'd been on a jury once before, is that correct, on
6 a prostitution -- solicitation of prostitution case?

7 A Uh-huh.

8 Q Do you recall what court that was in?

9 A No.

10 Q Okay. And you indicated you reached a verdict and
11 the judge assessed punishment?

12 A Right. We had been dismissed to give -- come up with
13 a verdict at punishment stage, and he come in and said it
14 had been taken care of.

15 Q Pled it out while deliberating?

16 A Yeah.

17 Q Anything about that case -- was that a good
18 experience, bad experience or --

19 A Well, that was my first time having gone -- been
20 selected for a juror or been called so it was -- it was
21 interesting because it lasted all day long and it was
22 just an experience that -- I mean it was fascinating, I
23 guess.

24 Q Right. Right.

25 A You know the process.

1 Q Okay. Did the defendant testify in that case?

2 A No.

3 Q You understand the defendant has a right not to
4 testify and in that case they didn't and I assume you
5 didn't use that against him. You relied upon the evidence
6 that was presented?

7 A Right.

8 Q There's a question here that says: Would an
9 individual's use or sell of drugs prevent them from
10 relying on any defense available to other members of
11 society? And you checked yes. And you said if you deal
12 drugs then you have money that buys you the best defense.
13 If you use drugs then you're probably poor and can't
14 afford a lawyer.

15 I think the question was designed to ask
16 you a question about this: Let's say I'm out dealing
17 drugs.

18 A Uh-huh.

19 Q And someone you know -- I'm standing on the street
20 corner -- someone comes up and wants to buy drugs. I sell
21 them drugs and the comes up and pulls a gun to rob me.
22 The law says I have a right to defend myself. Do you
23 believe because I'm a dope dealer, I don't have a right to
24 defend myself? Do you think I'm entitled to the same
25 rights the law provides to everybody else or think I give

1 those up because I'm a dope dealer?

2 A Well, no, you still have the right to defend yourself.

3 Q I think that's what the question was asking.

4 A Okay.

5 Q Also there's a question in here says: What are your
6 feelings about the death penalty? It says sometimes it's
7 warranted. You know what in your mind makes the case --
8 one case is warranted and another maybe is not. In your
9 mind what do you think the different factors apply to make
10 it warranted or not warranted?

11 A I think the first thing that came to my mind, you
12 know, was situations where children have been killed, you
13 know. Or family murdered. Something, just, I guess
14 something of that nature.

15 Q Okay. All right. There's another question: What is
16 the best argument for the death penalty? And you said an
17 eye for an eye but you put a question mark and said people
18 who are without a doubt guilty and show no remorse or who
19 would commit another crime why would I want to keep them
20 in jail housed and fed?

21 You know some people believe in eye for an
22 eye. You take someone's life, you forfeit your life.
23 That's not the way the system is defined. Do you believe
24 in eye for eye, if you kill someone, you also ought to
25 forfeit your life?

1 A Not necessarily. That's why I put the question mark
2 there. That's a phrase I thought of at the time.
3 Certainly if a person exhibits no remorse or no
4 forgiveness or no sense of having done any wrong --

5 Q Right.

6 A -- I would tend to feel that person deserves the death
7 penalty more than --

8 Q A lot of factors to be taken into consideration?

9 A Right.

10 Q And that's what the law provides for and taking a lot
11 of other information into consideration.

12 A Right.

13 Q Another question says do you -- I'll get into that
14 here in a minute. Let me talk to you for a moment about
15 the punishment stage of a capital murder trial. We talked
16 about the difference between murder and capital murder.

17 And the first duty of the jury just like you
18 know from the prostitution case, the first job you had was
19 to determine guilt or innocence. Has the State's proven
20 its case beyond a reasonable doubt? Is the defendant
21 guilty as charged?

22 If you find he is, then you go to the
23 punishment stage where ya'll were at when the judge came
24 in, interrupted you, said we pled the case or agreed to
25 the punishment case.

1 At the punishment stage of a capital murder
2 case is a lot different. Punishment stage of kind of case
3 you were on because there you had a range of punishment --

4 A Uh-huh.

5 Q -- for a number of days in jail or number of dollars.
6 in fine and that kind of stuff. Here there's two
7 punishments, life or death. And you decide those not by
8 voting in favor of life or death you answer the questions.

9 There is no way where there's an automatic
10 death penalty. No question. No such thing as automatic
11 death penalty. Instead you find somebody guilty of
12 capital murder. If you do go to punishment stage of trial
13 there, you may hear additional evidence.

14 You know guilt or innocence you heard about
15 the crime itself, what happened before, during and after
16 the crime because you're trying to determine has the State
17 proven all the elements that on a certain date in Harris
18 County, Texas the defendant kidnapped a certain person
19 caused their death or killed one person in the process of
20 the same criminal episode killed another person.

21 You're trying to find out whether we met
22 those elements. If we do, find him guilty of capital
23 murder. If you find him not guilty, everybody goes home,
24 no more trial.

25 If they're found guilty you go to the

1 punishment stage of trial where you may have additional
2 evidence about the defendant's character, his background,
3 his criminal history or lack thereof, his mental ability
4 or disability because you're hearing information about
5 the individual because your job is to determine what
6 punishment should this individual receive for the crime
7 we have found he has committed, okay, and a lot of things
8 may factor in there.

9 You may have a person who's never, never
10 been in trouble with the law before, straight A student,
11 choir boy, Eagle Scout, whole nine yards. What happened
12 was a horrible crime but it just stuck up like a sore
13 thumb. In the plan of life it was a total aberration.
14 He'd never done anything before.

15 Another case you may have somebody who
16 commits capital murder, you see throughout life been in
17 and out of trouble all the time, been delinquent, been
18 truant, all kinds of problems in school, trouble with the
19 law and all kinds of other stuff, okay.

20 A Uh-huh.

21 Q So you have to kind of determine what the facts are
22 in determining what the punishment may be. Issue No. 1
23 says: Do you find from the evidence beyond a reasonable
24 doubt there's a probability that the defendant would
25 commit criminal acts of violence and would constitute a

1 continuing threat to society?

2 Your job there is to determine beyond a
3 reasonable doubt. So the automatic answer to that is no
4 unless we prove it is true beyond a reasonable doubt just
5 like the automatic verdict is not guilty unless we prove
6 beyond a reasonable doubt he's guilty.

7 You have to determine have we proven beyond
8 a reasonable doubt there's a probability and the Judge
9 told you that doesn't mean possibility and doesn't mean
10 certainty.

11 A Uh-huh.

12 Q It means probability, kind of more likely than not.
13 So, the question is: Is it more likely than not this
14 person we found guilty would commit criminal acts of
15 violence? That could be anything from hitting someone
16 with a fist to killing somebody, anything criminal and
17 violent in nature, okay, that would constitute a
18 continuing threat to society.

19 So, your duty is to determine as the
20 defendant sits there that day do you believe it's more
21 likely than not he would be a continuing threat to commit
22 future acts of violence and then have to rely upon the
23 facts of the case any evidence you heard about the
24 defendant's character and background and his criminal
25 history or lack thereof, all of this.

1 On Issue No. 1 are you open to answering
2 that either yes or no depending on what the evidence
3 shows?

4 A Yes, uh-huh.

5 Q Okay. Some people may come and tell us if I have
6 found him guilty of capital murder the intentional taking
7 of another person's life without any legal justification
8 during the course of kidnapping, I'll always believe
9 there's a probability that he'd be a continuing threat to
10 commit future acts of violence.

11 As I said in the punishment stage of trial
12 you may hear evidence about the defendant's character and
13 background and may decide that's not true. May have
14 found, as I say, an Eagle Scout, alter boy, no trouble
15 with the law, a total aberration. Or you may find on the
16 other hand been in trouble all the time.

17 Are you open then on Issue No. 1 to answer
18 that either yes or no depending upon what all the evidence
19 shows?

20 A Yes, I am.

21 Q Can you assure me that you wouldn't answer yes just
22 because you found a person guilty of capital murder?

23 A I'm sorry.

24 Q In other words, can you assure me just because you
25 found somebody guilty of capital murder which you had to

1 do in order to get to this question just because of that
2 you would not always answer that question yes I mean take
3 that into consideration but there is no automatic answer.

4 Do you understand that?

5 A Right. Right. I understand.

6 Q Any problem?

7 A No.

8 Q If you answer that question yes, the defendant's going
9 to receive the death penalty unless on Issue No. 2 you
10 decide that he does not. Issue No. 2 doesn't have a
11 burden of proof instruction.

12 Instead it says: Do you find that taking
13 into consideration all of the evidence including the
14 circumstances of the events, that is the crime itself,
15 what you heard at guilt or innocence, the defendant's
16 character and background, that's what you heard in
17 punishment about his character and background and his
18 moral personal moral culpability, what I like to refer
19 to as personal responsibility for commission of the crime?

20 In other words, did he pull the trigger or
21 stab the person or do whatever or was he a getaway driver?
22 Do you find there's a sufficient mitigating circumstance
23 or circumstances -- I like to refer to it as reasons --
24 sufficient reasons why this person should receive life as
25 opposed to death?

1 What you do is go back and look through all
2 the evidence. Is there evidence we have heard that in our
3 minds -- in my mind because this is an individual decision
4 to you -- that in my mind makes me believe this person
5 should receive life as opposed to death.

6 For example, you may go back and look
7 through all the evidence, see if there's anything you
8 believe to be mitigating. If there is, then you consider
9 if it's sufficient to change your vote from death to life.
10 That's what you think. If it's not sufficient, you don't
11 change your vote, okay.

12 A Okay.

13 Q To give you an example how this works, let's say you
14 may have heard evidence during the trial the defendant was
15 high on drugs or alcohol during the crime. One juror may
16 say: I believe that mitigates towards a life sentence.
17 When you're high on drugs and alcohol you don't do things.

18 Or Juror two may say: Wait a second. I
19 know people that get high on drugs and alcohol and don't
20 commit capital murder. I don't see the connection of
21 committing a crime. If they get high on drugs and alcohol
22 again, they'll commit capital murder again. So, they
23 don't think it's mitigating.

24 You see two people look at the same
25 evidence. One finds it mitigating, one not. That's what

1 you're asked to do. And you weigh in your mind and decide
2 what affect it ought to be given. You may hear evidence
3 he was a slow learner. Not a very good student. Some
4 people say that mitigates towards a life sentence.

5 Then someone may say I know people with the
6 same type of mental problems this guy has, they don't
7 go out and commit capital murder. And I don't think
8 there's a connection between mental capability and
9 what he did in the crime. I don't think it's
10 mitigating. .

11 Again, two people look at the same evidence
12 and came up with different answers. That's okay. You're
13 going through the right process. The age of defendant.
14 Some may say he's a very young man that committed a stupid
15 mistake when young. When you get older you don't make
16 that mistake. I think that mitigates towards a life
17 sentence.

18 Somebody else may say if they've already
19 committed this crime at this age no telling what they do
20 10, 15 years down the road.

21 A Uh-huh.

22 Q So, they don't think it's mitigating. So, you see how
23 this process works. Go back and evaluate the evidence and
24 determine if there's any evidence that's mitigating. If
25 there is, is it sufficiently mitigating to give the person

1 life as opposed to death.

2 It gives you the option to change what was
3 otherwise going to be a death sentence.

4 A Yes, I see.

5 Q Any problem with that?

6 A No.

7 Q Now the questionnaire. Before we get an opportunity
8 to talk about what mitigating is -- and I dare say most
9 people when you say mitigating don't really -- I mean,
10 it's the kind of term I don't know where it came from.
11 It's probably not well understood by a lot of people.

12 There's a question here, 68, says: Do you
13 believe that mitigating -- and it's underlined -- evidence
14 concerning a capital murder defendant's background should
15 be considered in deciding whether or not he/she should
16 receive the death penalty? And you checked no.

17 Now, do you understand though that what the
18 law says in Issue No. 2 is that you shall look for
19 mitigation and if you find it you determine what affect
20 it's to be given. And it may result in you changing your
21 mind and give a life sentence and then again it may not.

22 A Right. When I answered that I didn't realize there
23 was a process. And I thought that when you impose a
24 verdict that all that was taken under one umbrella and
25 included in there not like this step and this step and

1 this step.

2 Q And it is a fair step process as we talk about guilt
3 or innocence stage then there's the issue of punishment
4 and all this process and all we need to know is just to
5 make sure that you would go through the process because I
6 don't know if you'll find anything mitigating or not.

7 Maybe you may look through all the evidence
8 and everything and not find anything mitigating. That's
9 entirely possible. What the question does is commit you
10 to looking, to the certainty of searching.

11 Any problem with that?

12 A No.

13 Q And I guess another way of asking that question is
14 this: If you had found someone guilty of capital murder
15 and then in Issue No. 1, if you determine that beyond a
16 reasonable doubt there's a probability more likely than
17 not that the person on trial who you had convicted of
18 capital murder would commit criminal acts of violence and
19 would constitute a continuing threat to society, are you
20 still open on Issue No. 2, that going through and looking
21 for mitigating evidence and if you find it weigh and
22 determining what effect that you have?

23 A Yes.

24 Q See some people say might say: If I find them guilty
25 and find they're a continuing threat, nothing will ever be

1 mitigating. They may be right there may be nothing. You
2 have to committed the search and looking for it and
3 following the instructions of that issue.

4 Any problem with that?

5 A No.

6 MR. MCCLELLAN: How much time?

7 THE COURT: None.

8 MR. MCCLELLAN: Thank you very much, ma'am.

9 I'll pass.

10 THE COURT: Do you have any more questions?

11 MR. MCCLELLAN: No, that's fine.

12 THE COURT: Mr. Hill.

13

14

EXAMINATION

15 **QUESTIONS BY MR. HILL:**

16 Q Hi, Ms. Amie, how are you? My name is Wayne Hill.

17 And Kurt Wentz is the other lawyer representing Mr. Mamou
18 on this case. I sit up here because that ledge kind of
19 jutes out and blocks our view. And so rather than you
20 having to look over there it's easier to sit here.

21 I want to give you the opportunity to
22 express yourself. Mr. McClellan asked you a whole series
23 of questions, told you what the law requires this, that
24 you're not going to do anything automatically. And there
25 are certain buzz phrases that are kind of used to get

1 people to sit up on the edge of their chair and figure --
2 answer one way or the other where they may seem to be
3 saying they're a fair and impartial juror.

4 This is the only opportunity we get to
5 speak with prospective jurors to determine whether or not
6 they can sit on a case like this, okay. Not everybody can
7 for any number of reasons. The State would not want to
8 have people sitting up here that says, "In every case
9 where the person is found guilty of capital murder, I
10 could never give the death penalty."

11 I think you'd agree that would be unfair to
12 the State, right?

13 A Right.

14 Q And I think you'd also agree it would be, you know, a
15 little unfair to the defendant if everybody that sat up
16 there says, "I always believe in the death penalty,"
17 right?

18 A Right.

19 Q Well, in Texas in order to serve on a jury, the 12
20 people have to say they believe in the death penalty
21 because if their ability to serve is impaired by their
22 belief that the death penalty should never be applied,
23 they don't get to serve.

24 So, the Defense starts right out with a
25 group of 12 people who believe in the death penalty. The

1 question is how strong do they feel that. And this is the
2 only time to express it. It's not a Physics test. No
3 right or wrong answers.

4 What we don't want to have people doing is
5 feeling like they got to fit in with what the law says.
6 If you're picked on this jury and figure out two months
7 from now or however long trying the case, I really should
8 have said something about this, I really have strong
9 feelings, it's too late.

10 This is why we go through the exercise and
11 this is -- there were some answers you gave that suggest
12 you have strong feelings about the death penalty. We want
13 to judge whether or not you are really feeling an
14 obligation one way or the other, okay.

15 I hope you don't feel like that's too
16 invasive or trying to pick on you or anything.
17 Mr. McClellan kept using the scenario of aberration. You
18 might find somebody guilty of capital murder or find
19 they're a choir boy or straight A student and then he asks
20 you could you find that that's maybe mitigating or
21 wouldn't find it mitigating and he never gave you an
22 opportunity to talk about what you think.

23 I want your honest feeling about sitting on
24 a case where you have just found somebody guilty of
25 capital murder. In this case it is alleged in two

1 different ways that Mr. Mamou either caused one person's
2 death either while or after he kidnapped the person, it
3 was a female; or alternatively that Mr. Mamou killed both
4 a female and male during the same criminal transaction,
5 killing two people without self-defense without any legal
6 justification. It was no accident. He meant for two
7 people to die and he did so.

8 I want to know honestly now how you feel
9 about sitting on a case like that and then coming and
10 answering these two questions, okay.

11 A Uh-huh.

12 Q Tell me what kind of comes to your mind first when he
13 asks you whether there's a probability this person you
14 just found guilty in a hypothetical capital murder would
15 likely be a threat to society, you feel like you have some
16 feelings already developed based on finding someone guilty
17 of capital murder?

18 A You mean as far as being able to answer that?

19 Q Yeah.

20 A Well, to me it makes it -- it makes it easier. Like
21 I said, you know I envisioned having to find someone
22 guilty and by a vote of hands. However it's done I'm not
23 really clear.

24 Q Right.

25 A And that person would automatically get the death

1 sentence.

2 Q Okay.

3 A This to me having the two issues makes it easier
4 because you're having to put some more thought into it
5 other than just the guilty part and put other things into
6 it and, you know, make -- based on what I heard, I'll say
7 I don't believe that this has any bearing on this or
8 whatever. But it makes it easier in the process to have
9 that to guide you.

10 Q Right. My question, I guess, goes a little beyond
11 that. And I'll ask you or tell you a little bit about
12 the process. I think it's fair if we ask you to show on
13 the jury, show by hands. Does it work? The State gets
14 to present all the evidence they have. They're trying to
15 prove their theory of cases that Mr. Mamou took the life
16 of two people specifically or that he killed this woman
17 while he was kidnapping her, okay.

18 At the end of their presentation of the
19 evidence, we can present evidence if we want. We don't
20 have to. Mr. Mamou doesn't have to say a single thing.
21 Then the jury will decide based on instructions the Court
22 gives you whether their case -- the State has proven their
23 case beyond a reasonable doubt.

24 It takes a 12 unanimous decision if the
25 State has in fact proven the capital murder beyond a

1 reasonable doubt. In other words you excluded any other
2 explanation. It wasn't self-defense. It wasn't an
3 accident. He meant for two people to be killed and he
4 did so or he meant for this woman to die while he was
5 kidnapping her and he did so. Then you come to the
6 questions.

7 And so my question now that you have
8 a little better understanding of what the process is, you
9 already found the person guilty, do you feel as though in
10 answering Question No. 1 you pretty much already have that
11 answer because you're allowed to consider the facts of the
12 case, okay?

13 That's -- I mean, that's what's being asked
14 of you to consider the evidence that's presented to you.
15 Assume for our purposes of discussion the only evidence
16 you have is all the evidence that you heard at the guilt
17 stage. In other words, you're now having to apply all
18 this evidence to answering question No. 1.

19 Do you feel that in all likelihood you would
20 have to answer that question yes because you had just
21 found the person guilty of this capital murder knowing
22 what that is?

23 A No, because I mean it would depend on what the
24 evidence is or what -- what you had learned about the
25 crime to be able to say.

1 Q What are some of the type of factors -- not that you
2 will necessarily be bound by any of these -- what are some
3 of the type of factors you might think are important how a
4 crime is committed that could help you to answer that
5 question no?

6 In other words, you know at this point,
7 Ms. Amie that you've just found somebody guilty of
8 committing capital murder.

9 A Uh-huh.

10 Q What are some of the circumstances that might be
11 important to your decision-making process or maybe reasons
12 would be a better way?

13 A Maybe past incident of that kind.

14 Q Okay.

15 A You say this is a murder kidnapping, maybe he had
16 abducted someone before, maybe not.

17 Q Okay.

18 A Maybe it was a relationship between that person and
19 that other person that caused it or --

20 Q Let's talk a little bit about that, the relationship
21 of the parties. How would that factor in? What would be
22 important for you to know about or why would that be a
23 factor?

24 A I guess you look at whether this is a stranger to
25 this person or whether they were friends. Whether they

1 were, you know, boyfriend girlfriend. Was it, you know,
2 someone he had something against. You know one might
3 lead, I guess, when you're thinking someone he knows, it's
4 more involved than just picking a stranger. Makes it
5 more, I guess, for lack of a better word personal.

6 Q Okay. Let me ask you if this makes sense to you
7 because you understand you could very well find a person
8 guilty of capital murder even though it was more involved
9 that the persons knew each other maybe the circumstances
10 of how a crime was committed shows that it was not you
11 know somebody that premeditated or randomly just come up
12 to somebody and said you're going to be my victim today.

13 Do you feel as though it would be important
14 to your decision-making process either Question No. 1 or
15 Question No. 2? Quite frankly, there was some type of
16 relationship, maybe whether it be a business transaction
17 or business dealing between people or they knew one
18 another for some reason and then something occurred which
19 caused an individual to commit capital murder because you
20 would clearly find he did commit capital murder; but do
21 you think those circumstances surrounding how the crime
22 came about could be an important factor in deciding either
23 of those questions?

24 A I would think so.

25 Q Okay. You know if you look at question No. 2, it's

1 interesting. It asks you: Do you find that taking into
2 consideration all of the evidence, and then it basically
3 breaks that evidence into three areas and says, the
4 circumstances of the offense the defendant's character and
5 background and the personal moral culpability of the
6 defendant.

7 So, I see there are kind of three areas it
8 directs you to. Is there any one of those three more
9 important to you answering that question than any other,
10 or do they all have equally kind of share 33 and a third
11 each?

12 A Well, I think the most important to me would be the
13 circumstances.

14 Q Okay. Would it be a fair statement -- I want to know
15 whether I'm interpreting or reading what you're telling me
16 correctly -- would the cold-blooded murder, somebody goes
17 into the 7-Eleven and just guns everybody down to steal
18 the money. That would be a circumstance of the crime that
19 I assume you would find very offensive and would probably,
20 all other things being equal, probably tell you somebody's
21 going to get the death penalty.

22 On the other side person goes to the grocery
23 store or convenience store to rob it and something happens
24 while they're inside there. A person panics. A person is
25 in a situation that he feels even though he wrongfully

1 feels that it's either him or somebody else and he shoots
2 people killing them.

3 Does that -- is that a distinguishable set
4 of circumstances than that of the cold-blooded murder, his
5 whole purpose to go in and wipe people out and take money?

6 A Yes.

7 Q Okay. Can you tell me why?

8 A Well, because in the first one you have somebody
9 intending to do that, you know. Obviously, someone goes
10 into a store with that intention, his frame of mind.
11 Someone who goes into a burglary and all of a sudden -- I
12 can see where something goes wrong, like you said, and
13 panics: What do I do? And you're going to make a
14 dramatic mistake. It's not the same as going in with that
15 intent or purpose in mind. You know, you started out
16 small wanting to rob \$20 and ended up killing someone.

17 Q You understand in either of those situations that
18 person is guilty of capital murder. You can do an act
19 intentionally because Texas requires that an intentional
20 act if I had a handgun and I shot at Mr. Mamou right now
21 and caused his death I committed murder. If I was doing
22 another felony during the course of it, it would be
23 capital murder.

24 I want to make sure you're comfortable
25 with evaluating all this evidence and give it a real close

1 look at when the State uses phrases like you wouldn't
2 automatically do something, that kind of makes people feel
3 nervous. I don't do anything automatically. I want to
4 reason carefully before I make a decision.

5 Do you think that the only circumstances
6 or the only situation that you could think of where a
7 person may not be a continuing threat to society would
8 be that choir boy, straight A student example or do you
9 think there are a whole lot of people that don't measure
10 up to that standard by the facts of the case and the
11 evidence that's submitted to you might not suggest the
12 answer to Question No. 1 might be yes?

13 A I'm not sure I understood what you asked me.

14 Q Okay. The State gives you extreme examples of the
15 choir boy, straight A student. You may be gun down a
16 hundred people and be a straight A student and not think
17 they're going to be a threat to society. I don't know
18 whether you agree with that proposition.

19 A No.

20 Q Or if your thought process is it don't matter if he's
21 a choir boy, if he committed capital murder there's always
22 going to be a probability he's going to be a threat.

23 A Right, I agree.

24 Q Is that how you feel?

25 A Yes, I agree.

1 Q So, let me go back and ask this question: Do you feel
2 that in all cases no matter what the nature of the capital
3 murder that if you had found beyond a reasonable doubt a
4 person is guilty of capital murder, do you believe that
5 the answer to Question No. 1 would always have to be, yes,
6 there's at least a probability that the defendant would
7 commit criminal acts of violence that would constitute a
8 continuing threat to society?

9 A Okay. You're saying because I found somebody guilty
10 of capital murder would the answer to No. 1 always be yes?

11 Q Correct. You used that same evidence.

12 A No.

13 Q Okay. Do you hesitate at all in answering that?

14 A No, I'm thinking it through.

15 Q Okay. Because I thought the State gave you an example
16 that kind of made it seem like the pillar of the
17 community, therefore, why would you not think that this
18 guy may have been just an aberration.

19 I just want to make sure you realize that
20 nobody -- everybody that walks in this courtroom is going
21 to be able to produce evidence they're straight A student
22 and choir boy, okay.

23 What I want to know about you, if anything,
24 is that when I go and talk to Mr. Wentz and Mr. Mamou
25 tells me I shouldn't invite you back here for the 29th of

1 September, is there anything that you can think of that
2 you would want to say to me, "Mr. Hill, you know you
3 really don't want me sitting listening to this case?"

4 A No. I guess you probably know more about me since I
5 filled out this questionnaire.

6 Q I'll turn it around. Is there anything you would
7 want to tell me, "Mr. Hill, this is specifically why you
8 would want to have me on this case." Something about your
9 background. Something about what you do. Something that
10 gives me insight to tell me this is just the type of juror
11 I would want on the case, listening to a case this
12 serious?

13 A I mean, I'm just a pretty average person.

14 Q Okay.

15 A I like to give people the benefit of the doubt. As a
16 parent, you know, my husband and I have discussions about
17 what my son did this and he did it because of this or
18 that. Don't always tend to agree. And I can see raising
19 a child, there's always two sides to it. And we can see
20 the same child going and have two totally different
21 appearances about him.

22 Q Right.

23 A And I would like to think I give everybody a fair
24 chance and treat them accordingly.

25 Q Okay. Do you ever read any of Patricia Cromwell

1 novels?

2 A No.

3 Q Okay. Thanks.

4 A You're welcome.

5 THE COURT: Ms. Amie, in just a second I'm
6 going to excuse you. Before I do, I will tell you
7 that we want you back Wednesday, the 29th of
8 September, at 9:30. I will give you a piece of paper
9 about that in just a second which I believe to be
10 three weeks from yesterday.

11 Between now and the next time we get
12 together, don't you change your lifestyle one bit for
13 us. You do your family things just exactly like you
14 would do. And do your personal things and your
15 business things like you would do them.

16 If you even have a chance between now and
17 the next time we get together to leave for an extended
18 trip, take the chance and go. All we ask of you
19 between now and then is this: Please do not talk
20 about this case with anybody. Please do not permit
21 anybody to talk about this case with you.

22 In the event there is any media publicity
23 about this case, avoid it. Anything about the case on
24 the television, refuse to watch it. Anything about
25 the case on the radio, refuse to hear it. Anything

1 about the case in the newspaper, refuse to read it.

2 And Ms. Amie, the reason for each of those
3 five restrictions is for the purpose of accomplishing
4 the same common objective and that's this: If you do
5 become a juror in this case, the decision that you
6 reach, whatever that decision winds up being, must be
7 based exclusively upon the information you receive
8 from within the courtroom. And your decision can't in
9 any way be influenced or affected by any outside the
10 courtroom information.

11 That's why we try to keep that apart. When
12 we get together on Wednesday the 29th if we get
13 started on time by about the noon hour we'll be
14 through. And everybody will know that day -- will
15 leave here knowing specifically whether they're a
16 juror or not a juror on the case.

17 If a person is selected as a juror on the
18 Wednesday the 29th, they will begin on the following
19 Monday the 4th. If you need something for anybody at
20 work to show them where you have been, that will take
21 care of it.

22 This is the reminder note of where and when
23 we want you to be right outside the door where you
24 were waiting this morning 9:30, Wednesday, September
25 the 29th. Before you leave have you any questions

1 for me?

2 VENIRE PERSON AMIE: No.

3 THE COURT: Okay. Thank you very much for
4 being with us. We look forward to seeing you the
5 next couple of weeks. Anybody need anything? Okay.

6 Ms. Tinnemeyer, please.

7 (Prospective Juror No. 18, Jerri McGraw
8 Tinnemeyer entered the courtroom.)

9 THE COURT: Come on in here and have a seat,
10 please, ma'am. Been a long time since we've seen you.
11 Have a seat, please. Are you holding up okay?

12 VENIRE PERSON TINNEMEYER: Yes.

13 THE COURT: All right. Good.

14 Ms. Tinnemeyer, first off let me ask you to remember
15 back to yesterday and the things we talked about
16 yesterday, add to it this morning the things we talked
17 about this morning and I'm talking about this morning
18 is when the group as a whole was together, out of
19 everything we have talked about up to this point, do
20 you have any questions at all for me?

21 VENIRE PERSON TINNEMEYER: No.

22 THE COURT: Now, I'm asking the questions
23 and the natural thing for you to do is answer me.
24 These folks have to hear your answer to my question.
25 If you would please keep your voice up. Is there

1 anything to this point that we have not yet touched
2 on that we haven't yet talked about that you feel as
3 though would be a good idea to talk about that might
4 have some influence or bearing on you being a juror in
5 this case?

6 VENIRE PERSON TINNEMEYER: Not that I would
7 be aware of, no.

8 THE COURT: Don't suppress secret
9 information, do you?

10 VENIRE PERSON TINNEMEYER: No.

11 THE COURT: Is there anything at all that
12 you can think of, something about your personal life
13 whether it be something about your professional life
14 or whether it be something about your health or
15 whether it be something else that you feel could in
16 any way interfere with your ability to be a juror in
17 this case during the time frame that we've talked
18 about?

19 VENIRE PERSON TINNEMEYER: No, sir.

20 THE COURT: In just a second the lawyers are
21 going to visit with you. All this process is about, I
22 think, is to make sure as best we can to explain to
23 you what the rules are that can come into play during
24 the course of trial.

25 First of all, can you follow it? And what

1 you heard so far your answer would be what?

2 VENIRE PERSON TINNEMEYER: Yes.

3 THE COURT: Nothing that you've heard so
4 far so personally repulsive and so offensive you'd not
5 be able to abide by it?

6 VENIRE PERSON TINNEMEYER: No.

7 THE COURT: Second thing, I think this
8 process is meant to accomplish and to make sure the
9 lawyers make sure for and you to make sure with
10 yourself that if you were a juror in this case you
11 could sit back in any one of those 12 chairs and
12 listen to every single shred of evidence the lawyers
13 give and tell them how you feel appropriate and based
14 upon how you evaluate the information they give to you
15 come up with what you think is the right result to
16 reach.

17 Does that sound like you?

18 VENIRE PERSON TINNEMEYER: Yes.

19 THE COURT: The idea being your job is not
20 to please one side or the other. Your job is
21 certainly not to please me. Your job is to make
22 certain five years from now when Ms. Tinnemeyer wakes
23 up in the morning she can look in the mirror and say,
24 "You know five years ago in this case I did exactly
25 the right thing."

1 Your job is to satisfy yourself whatever the
2 result is. And are you open to the whole concept of
3 guilty, not guilty, life, death? That's because a
4 person is found guilty of capital murder for that
5 reason and that reason only, does not require these
6 questions be answered any specific way.

7 VENIRE PERSON TINNEMEYER: (Nods head.)

8 THE COURT: The evidence is what might
9 require it?

10 VENIRE PERSON TINNEMEYER: Yes, sir.

11 THE COURT: Do you have any questions of me
12 before we begin?

13 VENIRE PERSON TINNEMEYER: I think I
14 understand everything that we talked about in the last
15 two or three days. Yes, I do understand.

16 THE COURT: Mr. McClellan.

17 MR. MCCLELLAN: Thank you, Your Honor.

18

19 **JERRI MCGRAW TINNEMEYER,**
20 having been sworn as a prospective juror, testified as
21 follows:

22

23 **EXAMINATION**

24 **QUESTIONS BY MR. MCCLELLAN:**

25 Q My name is Lyn McClellan. Along with Claire Connors,

1 we represent the State of Texas in this case. I want you
2 to sit back and relax. I'm going to ask you to share with
3 us, if you will, your opinions and beliefs about certain
4 aspects of the law. I got about 20 minutes to talk to
5 you, and Mr. Hill will have about 20 minutes to make fun
6 of what questions I ask of you which is ardently --

7 MR. HILL: Thank you.

8 Q (By Mr. McClellan) Let me ask you, first of all, you
9 indicated you used to oppose the death penalty?

10 A Yes.

11 Q And have you now changed your mind? Tell us how that
12 occurred.

13 A I don't know exactly how it occurred; but I do know
14 that anybody would mention it, I'd say no, no, no and --

15 Q What period in your life was that?

16 A Probably college.

17 Q Okay.

18 A Maybe right when I first got married.

19 Q Okay.

20 A And then, you know, I'm 35, too. Life experiences
21 itself tell you, yes, there are certain situations
22 that --

23 Q What kind of situations come to your mind when you
24 think of situations where I think the death penalty may be
25 appropriate as being available as one of the forms of

1 punishment?

2 A A specific kind?

3 Q Just what comes to your mind?

4 A Anyone who would murder. My first thought that comes
5 to mind why I'm hesitant anyone who would murder a child:

6 Q Murder a child, okay.

7 A Or murder anybody. But that one is the one that jumps
8 out of me.

9 Q We get that answer quite often. Murder of children.
10 For murder, of course, in the State of Texas the death
11 penalty doesn't apply unless it's a child under a certain
12 age. To murder someone intentionally take someone's life
13 without any justification.

14 A Correct.

15 Q Not self-defense, not accident.

16 A Correct.

17 Q Intend to kill someone and do so, that's the kind of
18 range the Judge talked about from five years to 99 years
19 or life. Capital murder is murder plus some other
20 aggravated circumstance, murder kidnapping, what we have
21 alleged here and murder during a murder, killing two or
22 more people during one criminal episode are the kinds of
23 cases the Legislature have said the death penalty is
24 available.

25 There's no automatic death penalty for any

1 crime. It's available. Do you agree it ought to be
2 available for those types of crimes that the Legislature
3 set out ought to be available for that is murder plus some
4 other aggravated circumstance.

5 Do you think they should allow for that?

6 A Yes. Yes.

7 Q If you were the governess, if you were putting how to
8 be -- would you keep the death penalty available on the
9 books as punishment for certain types of crimes?

10 A Yes.

11 Q You say you're a Special Programs Counselor at
12 Pasadena ISD. What does that entail?

13 A I coordinate the Advance Placement Program for the
14 gifted and talented, the program for the At-risk Program
15 our credit redemption students who have failed. We try to
16 get them back on track with their peers. I coordinate
17 with CIS drug-free safe schools. I write the campus
18 improvement book. I'm on the Campus Improvement team. I
19 coordinate that.

20 Q What does everybody else do?

21 A I ask the same question. Does anybody else have -- is
22 anybody else doing anything but me?

23 Q Do you ever deal with Special Ed students or that
24 area?

25 A We have a Special Education counselor. I do sit in on

1 order if I have to, if I'm required to for a specific
2 purpose or if there's someone that's --

3 Q I'm sorry, I didn't mean to interrupt. What is the
4 At-risk Program?

5 A These are students who have failed one or more classes
6 one or more school years have failed one or more parts of
7 TAAS. And I know you're familiar with that. Be all over
8 school right now.

9 Q Do you have deal with alternative schools if they
10 have --

11 A Yes, we do.

12 Q And would people who have disciplinary problems on a
13 regular basis be sent to an alternative school?

14 A Those are students are more likely to be assigned to
15 me. I have a group of what we refer to as rollback 9th
16 graders. And it is my job to see each one of those and I
17 don't know everytime, you know, I've gotten a chance.
18 I've worked on their graduation plan. And what we found
19 is if we can get that 9th grader who has failed the first
20 time to either be in summer school in 7th period the
21 credit redemption courses if we can get that child to get
22 back on track with his or her peers, then they're more apt
23 to go ahead and graduate.

24 So, I work really hard with that grade of
25 students. It's about 200.

1 Q And this is a tough question, I know, but do you ever
2 see kids that basically just in your own personal
3 evaluation, thought process that you have, that he'll be
4 down at the courthouse you know before long? I know you
5 try to help.

6 A If intervention isn't done, yes, I do because many of
7 students come to me on parole; and we have parole
8 officers. And, again, you know I don't look at it is the
9 student going to end up back here? I look at it can I
10 intervene and keep the students in school.

11 Q Okay. Do you think this reforming process has more to
12 do with the program that's being given or the attitude of
13 the person who's going to be in it or accepted into it?

14 A Probably the attitude of the student.

15 Q If they want to, it's available there and they can do
16 it. If they don't want to, it's going to be hard to make
17 them?

18 A Yeah. I also know as 9th graders a lot of them want
19 to do as their peers do.

20 Q Right.

21 A So, if I can get in there and coerce them, let's go,
22 won't you go this time for your mom, dad, whoever I get in
23 touch with, then a lot of them once you can get them to a
24 certain degree they tend to pick up -- a motivation may
25 come back. I've seen that not as often as I would like,

1 but to the best of my ability, yes.

2 Q This is something that crosses my mind. My wife's a
3 Special Ed teacher and done that for 15 years or so.
4 Someone's who dedicated in their profession to helping
5 others who is called upon to be a juror where they have
6 to make a decision of someone committing a crime that
7 shouldn't be a problem if the State proved its case or
8 not. They did.

9 Then what's to be the punishment for that
10 person. And when there's only two possibilities in a
11 capital case being life or death. Death says they are
12 giving up and basically saying this person is beyond
13 redemption by answering those questions. And that's going
14 to be the appropriate deal. Life means, well, he does 40
15 years day for day and see what happens after that.

16 Based upon you and your life choice and your
17 life service of trying to help people, are you going to be
18 more inclined to try to find -- say there's something
19 there that can be saved versus if the evidence calls for
20 the death penalty, gee, just something about me we needed
21 to do something else?

22 A With students that I have to decide whether or not
23 they can stay at my school or do they need to go to
24 CEEP. Granted the analogy is not on the same level. If
25 we have done what -- everything we could do and that child

1 is not going to function there I do not -- and again,
2 we'll go through and I probably overdo this. I go through
3 every nook and cranny.

4 Can I make this decision, yes.

5 Q Here's what I'm looking at here. You're going to
6 have someone on trial who you didn't have an opportunity
7 to deal with, you didn't have an opportunity to counsel or
8 may see records they should have done this, done that and
9 should have done this and didn't do that because your life
10 choice and profession where you are going to be more
11 inclined to figure out ways -- are you going to always be
12 the one to say, "Yeah, well we can still try something
13 else. Don't need to go to death. We can always try
14 something else. There's always the chance this person
15 will go straight. And regardless of the crime, regardless
16 what the evidence might say, I still think we ought to go
17 with the idea of giving this guy one more chance."

18 A I would probably say -- well, I'd have to know --

19 Q Sure.

20 A -- the circumstances on that. I couldn't answer that
21 yes or no.

22 Q Okay. There's a question in here: Obedience and
23 reasons for authority are the most important virtues
24 children should learn. And you said you generally
25 disagree. Can you tell me what your thoughts are on

1 that?

2 A I think those are two children should know.

3 Q What do you think is most important?

4 A Love, caring, responsibility.

5 Q Okay.

6 A You know, becoming productive members of society.

7 Q Okay. You mentioned in here Carla Faye Tucker and
8 Ronald Clark O'Brien. Carla Faye Tucker. What was your
9 position about that she received the death penalty, had a
10 religious conversion, and the Governor eventually decided
11 not to commute her and she was eventually executed.

12 Do you think the Governor did the right or
13 wrong thing?

14 A At the time I thought he did the right thing, but
15 then after that because that one I did follow as close
16 as I could --

17 Q You followed it from the time it came up in the
18 beginning, the pick ax?

19 A No, I'm not sure I was even living in Texas at the
20 time.

21 Q Right. Okay.

22 A I had watched it on one of the TV shows and studied
23 that but I thought the crime was severe, however you want
24 to call it.

25 Q Right.

1 A But then you turn around and right after that he
2 gave --

3 Q I know what you're --

4 A Stay of execution for the person following right
5 behind that. I thought well what did that person do that
6 Carla Faye Tucker did not do.

7 Q What about Ronald Clark O'Brien that happened out in
8 Pasadena.

9 Q I knew him. I went to high school with him.

10 Q Is that right?

11 A Uh-huh.

12 Q Did you think that the death penalty was appropriate
13 in his case?

14 A Yes.

15 Q How long after high school was it that this occurred?

16 A His older brothers and I were in the same grade and
17 Ronald was a couple of years behind us, and this happened
18 probably 15 years after we were out of high school.

19 Q Okay. So, 15 years out of high school you believe in
20 the death penalty?

21 A Yes, now. I mean, who had not heard of, you know,
22 someone at Halloween -- I mean, that one was just --

23 Q What did you think about the Dead Men Walking movie?

24 A That one got me. I think it got to me.

25 Q How so?

1 A I could almost feel that knowing that that person was
2 going to die.

3 Q How did that make you feel?

4 A Uncomfortable.

5 Q Uncomfortable?

6 A Well, for her.

7 Q For the lawyer?

8 A Uh-huh.

9 Q Knowing you could be called upon to put another in
10 that position, do you think you could make that decision
11 if that's what the law and evidence called for?

12 A Yes.

13 Q You were in an assault case about three years ago?

14 A Yes.

15 Q Was that a felony or misdemeanor? Do you remember if
16 it was 12 people or 6?

17 A Twelve.

18 Q And what kind of assault was it?

19 A It was --

20 Q Weapon?

21 A It was -- do I tell you about the case?

22 Q Sure.

23 A The gentlemen took his truck and ran into another man
24 at the filling station off of I-10 and tried to run him
25 down was what the one person said the other one did and

1 we agreed that, yes, that is what happened.

2 Q And did ya'll assess punishment? What punishment did
3 you assess, do you recall?

4 A It was that one, three strikes and you're out.

5 Q He was out?

6 A Uh-huh.

7 Q Okay.

8 A I wasn't exactly sure.

9 Q Probably 25 years or life.

10 A Yes.

11 Q Do you remember what you gave him, 25 or life? Did
12 you give 25 or did you give life?

13 A I think we went with 25.

14 Q Do you think you would have similar empathy you might
15 have experienced in Dead Man Walking for the person who
16 was -- for the defendant who was getting ready to be
17 executed and maybe the lawyer trying to keep him from it?

18 Do you think you would have a similar type
19 empathy for the victim of the crime if they portrayed any
20 victim? In trial you're going to hear about the victim of
21 crime, someone who's been killed.

22 A Correct.

23 Q And their family.

24 A Would I have empathy, definitely.

25 Q Which of those do you think you would override if they

1 could, the family?

2 A Are you talking about the family as opposed to the
3 lawyer?

4 Q Well, I'm talking about the, I guess, the defendant
5 versus the victim.

6 A Okay, yeah.

7 Q See I sometimes tend to overanalyze things. Tell me
8 what you would do.

9 A Okay. In the programs I was listing that I put
10 together, you know, I hire the teachers. I recruit
11 teachers. I hire teachers. And everyone says they want
12 to teach a session. And I go through and, you know, I put
13 them down where they want to teach a session two only,
14 three, four, and five only.

15 And everybody said just give them a session.
16 Or if something comes up with students and I have to sit
17 and counsel with them I don't want to say yes without
18 hearing everything. I want somebody -- the student to
19 tell me and I want to hear it from the other side. You
20 don't come in and just say get this kid out of my class.
21 I need to have more information. I can't make those
22 decisions without so. And, yes, I do tend to over-
23 analyze.

24 Q And I guess the only thing that strikes me about the
25 overanalyze is I guess I can conceive of a case pretty

1 straight forward and somebody say: Well, you know must be
2 something there I'm not seeing because it appears to be
3 open and shut. And, is that right, looking for things
4 that are -- may not be there?

5 A I possibly could. I couldn't say. I wouldn't if it's
6 very straightforward. Then I usually -- I will say I feel
7 I can make that decision if it's straightforward; but if
8 we got some, you know, gray area, then I really do have to
9 sit back and think about it.

10 Q I think we could find in any criminal case there's
11 going to be gray area.

12 A Right.

13 Q The burden is on us to prove beyond a reasonable doubt
14 the elements of the offense. There's lots of other gray
15 area outside the elements of the offense you may never
16 know or know --

17 A Right.

18 Q -- what happened or didn't happen. But the elements
19 of the offense is what the burden is proved. And if we do
20 that, that other gray area may have to remain gray. I
21 don't know.

22 A Right. If indeed you're prosecuting or defending
23 then you pretty well would answer the gray area and it's
24 up to me at that point to decide.

25 Q Right.

1 A You know how. But I think you said, Judge, do you
2 believe or not believe, you know -- do you understand
3 what I'm saying?

4 THE COURT: That's fine. Mr. McClellan.

5 A I would have to make the decision.

6 Q Thank you much, ma'am.

7 MR. MCCLELLAN: Pass the venireman.

8 THE COURT: Mr. Hill.

9 MR. HILL: Thank you, Judge.

10

11

EXAMINATION

12

QUESTIONS BY MR. HILL:

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Q How are you today? In all fairness, going to sit back there and taking undue advantage of Mr. McClellan sitting up there. Satisfiable relationship is important. So, I just want to talk with you a little bit about some of the things you said in response to Mr. McClellan's questions.

And I tell you something, when you came up earlier this morning and were candid with the Judge about what you may have heard somebody say that said everything about who you were because I tell you a lot of people when they're brought up especially out of the group and the Judge starts asking questions most people start feeling real uncomfortable and feel like somebody did something wrong and I better not rat out on the other potential

1 jurors.

2 And you said what you had to say. That
3 gave me a real comfort level. You're somebody that will
4 say what you really feel about things. Now, that being
5 said, if I were trying to evaluate as I am right now
6 whether you should be somebody that gets invited back at
7 the end of September to be a part of a larger pool of
8 jurors from which 12 will be selected, what would you tell
9 me on the one hand to say don't pick me; and then flip
10 side of that, what would you tell me to say you should
11 pick me?

12 What kind of self-evaluation? There are things I
13 need to know that ring out in your mind, I'm not a good
14 juror from defense perspective on jury like this?

15 A From the defense?

16 Q Uh-huh.

17 A I guess one would be don't pick me I could think this
18 was the worse thing I ever heard of.

19 Q Right.

20 A And the other be you would have to hear all the facts.

21 Q That was one of the things I noted when you were just
22 relating the circumstances -- you said that when
23 Mr. McClellan asked you about overanalyzing the other
24 side, you like to hear the other side. This obviously
25 creates a problem, potentially creates a problem.

1 From criminal trial law -- you've watched
2 "The Practice." You understand that sometimes the
3 defendant does not take the witness stand.

4 A Correct.

5 Q Are you comfortable if you're sitting here in a few
6 weeks from now sitting as a juror, State calls a bunch of
7 witnesses, all testify and presumably they're all going to
8 say things at least on direct that are harmful to
9 Mr. Mamou.

10 A Right.

11 Q I will then and Mr. Wentz get a chance to
12 cross-examine them. You may have a different feeling
13 after you hear our cross-examination or maybe you feel
14 exactly the way you did after direct. In any event, at
15 some point the State is going to stand up and say, "We
16 have no further questions, Judge. We're going to rest."

17 How comfortable are you with your ability
18 to actually sit in judgement of somebody where you may not
19 hear a word from Mr. Mamou or any witnesses being called
20 at that stage of trial; Mr. Mamou or Mr. Wentz or I?

21 A How comfortable I am with the decision I would make?

22 Q Correct.

23 A I would be comfortable with whatever I came up with.

24 Q And why would that be? What is it that you're
25 judging?

1 A I can't say, human nature. I'm judging from all of
2 my life experiences.

3 Q Right.

4 A You know everything I've been through and things I've
5 heard, seen, done and you can't just stay on the fence.
6 You got to make a decision, even leap sometimes.

7 Q But you're ultimately called upon to question and
8 evaluate the strength of what evidence they present.

9 A Correct.

10 Q If they have not convinced you and 11 others beyond
11 a reasonable doubt, would it make a world of difference
12 any difference at all that Mr. Mamou never got out of the
13 chair and walked towards the witness stand?

14 A No, it would not.

15 Q So, you told me a couple of things that would be bad
16 or reasons why I shouldn't pick you. Why should I pick
17 you?

18 A Why should you pick me? The only thing I can tell you
19 is I'm honest. I do listen. I do not take anything
20 lightly.

21 Q And I don't think anybody would want you to take a
22 case like this lightly.

23 A I was fixing to say I have no desire to be off my job
24 or anything else like that.

25 Q Right.

1 A I think I'm a good person and I think I can evaluate
2 on that.

3 Q Sure. Okay. See it's not necessarily put you through
4 the ringer. Sometimes people get up and say all the right
5 things and it's clear to everybody, you know, that they
6 should be invited back to sit on the larger pool.

7 Do you have any questions of me?

8 A No, I don't think so. I think I understand
9 everything. Should I have? Let -- yeah, I do. Should I
10 have any questions?

11 Q That's up to the individual, you know. If there was
12 something Mr. McClellan sometimes he slurs his words,
13 drinks too much the coffee.

14 A I will ask one question: When I went through all
15 this, you know, this deal and put did anybody not find it
16 funny, the TV shows?

17 Q Yeah.

18 A I couldn't believe because I was the last one to
19 finish and I went through, if you notice, I underlined
20 words I thought very important and I looked at that I
21 don't believe I put those because I don't -- we do not
22 have lawyers in the family. But --

23 Q So you are -- you're a lucky family then.

24 A I just thought it was funny those are -- were the top
25 two.

1 Q Thank you very much.

2 THE COURT: Thank your, sir.

3 Ms. Tinnemeyer, in just a second I'm going to excuse
4 you. Before I do, I'll tell you we want you back on
5 Wednesday the 29th of September. And in a second I'll
6 give you a piece of paper about it.

7 Between now and when we get together again,
8 do not alter your lifestyle one bit for us. Do your
9 professional things just like you ordinarily do them.
10 Your personal things just like you ordinarily do.

11 If between now and then you even have a
12 chance to leave town for an extended period, take the
13 chance and go. All we ask of you between the time we
14 see you and next is this: Please do not talk about
15 that case with anybody.

16 Please do no permit anybody to talk about
17 that case with you. If between now and when we see
18 you on the 29th there should be any news media
19 coverage about this case, avoid it. Anything about
20 this case on the television, refuse to watch it.

21 Anything on the radio, refuse to hear about
22 it. Anything in the newspaper, refuse to read it.
23 For each of the five restrictions the purpose of
24 hopefully accomplishing the objective that's this: If
25 you do become a juror in the case, the decision you

1 reach whatever this decision happens to be must be
2 based exclusively upon the information you receive
3 from here within the courtroom and cannot be in any
4 way influenced or affected by any outside the
5 courtroom information.

6 VENIRE PERSON TINNEMEYER: Okay.

7 THE COURT: If we can get started on the
8 29th on time, we ought to be out of here about the
9 noon hour. Everybody when we leave here on the
10 29th -- everybody will leave here definitely knowing
11 whether they are or are not a juror in this case.

12 If you need something for folks to show
13 where you've been the three days you've been with us
14 that would suffice. And this is a reminder notice as
15 to where and when we want you to be back right outside
16 the doorway on the 29th of September at 9:30. I
17 believe three weeks from yesterday.

18 Before you leave, have you any questions for
19 me?

20 VENIRE PERSON TINNEMEYER: No, I think I'm
21 okay.

22 THE COURT: With that, thank you very much.
23 Look forward to seeing you in a couple of weeks.

24 Ms. Cooksey seems to pose a greater problem
25 in the questionnaire than she posed as a juror. I

1 don't know which is going to win, but let's
2 investigate Ms. Cooksey.

3 (Prospective Juror No. 19, Ms. Ramie Colleen
4 Cooksey entered the courtroom.)

5 THE COURT: Hi, Ms. Cooksey. Come on in,
6 please, right over here. When you make this corner
7 you'll find a chair, I hope. Please sit down. Relax
8 and make yourself comfortable. Are you holding up
9 okay?

10 VENIRE PERSON COOKSEY: Okay.

11 THE COURT: Ms. Cooksey, you have a very
12 pleasant and soft voice. These people out here are
13 going to have to also hear what you say. Please
14 project your voice and move the microphone around if
15 you feel you need to.

16 Ms. Cooksey, first of all, let me ask you
17 to -- I'd like you to remember back to yesterday and
18 the things we talked about yesterday add to them today
19 this morning and the things we talked about this
20 morning. Out of everything we have talked about up
21 to this point, do you have any questions at all for
22 me?

23 VENIRE PERSON COOKSEY: (Nods head.)

24 THE COURT: Okay. Now --

25 VENIRE PERSON COOKSEY: No.

1 THE COURT: All right. That's a deal.

2 Moving along, is there anything to this point that we
3 have not yet talked about that you feel as though we
4 should talk about because it might have some bearing
5 or influence on you as a juror?

6 VENIRE PERSON COOKSEY: No.

7 THE COURT: Is there anything at all
8 perhaps something about your personal life, perhaps
9 something about your professional life, perhaps
10 something about your health, perhaps something
11 relating to something else, do you feel in any way
12 would interfere with your ability to be a juror in
13 this case during the time frame we talked about?

14 VENIRE PERSON COOKSEY: No, I don't.

15 THE COURT: Ms. Cooksey, we have the benefit
16 of your questionnaire and we know when you filled out
17 the questionnaire you had not yet heard us talk about
18 any principles of law anything at all that applies to
19 the -- can apply to a case like this.

20 Now, perhaps if you were given your
21 questionnaire to complete again perhaps some of
22 your answers would change based upon what you know
23 presently perhaps then again you may keep the same
24 answers. Doesn't make any difference what you say.
25 I'm not trying to talk you into or out of anything.

1 I want to ask you some questions about
2 your answers you placed on your questionnaire.
3 Specifically, I'll start off with Page No. 12,
4 Question No. 58. The question was: What are your
5 feelings about the death penalty? And your answer
6 was: If you are found guilty of killing someone life
7 in malice and not self-protection the death penalty
8 should be enforced, if I'm reading that correctly.

9 Let me say first off and we see this quite
10 frequently to be honest with you. Self-defense is not
11 a crime. It is not a crime to take the life of
12 somebody if you are legitimately defending your life
13 or the life of another. So, let's eliminate self-
14 defense as a thought about the death penalty. It is
15 simply not even a crime.

16 And I go from there to Question No. 59
17 which says -- I don't feel like your opinion -- what
18 is the best argument for the death penalty in our
19 society? You don't feel like supporting killers.

20 Tell me now that you know that a life
21 sentence is theoretically as equally an option as --
22 equal sentencing option as the death sentence for a
23 person convicted of capital murder and taking into
24 account your thoughts that you have given us as to
25 your answer to these two questions, are you saying

1 that you would be more likely to answer these special
2 issues that we talked about over here today in
3 such a way that the death penalty would be imposed
4 over a life sentence because if you answer them such a
5 way the life sentence imposed, you would be supporting
6 the killers. You see what I'm asking?

7 VENIRE PERSON COOKSEY: Yeah, I understand.

8 THE COURT: Well, what's your thought and
9 there's no right answer or wrong answer we just --

10 VENIRE PERSON COOKSEY: If I feel they're
11 guilty --

12 THE COURT: If you found somebody guilty
13 of capital murder, let's assume that some imaginary
14 case has progressed to that point, whatever the facts
15 were let's not worry ourselves?

16 VENIRE PERSON COOKSEY: Violence not what
17 I'm saying.

18 THE COURT: No, you found somebody guilty
19 of capital murder you, let's say, somebody being
20 abused a teenager and they kill their parents because
21 they don't want to be about abused anymore?

22 VENIRE PERSON COOKSEY: I would go for life
23 imprisonment. No for guilty do something else if
24 they walked in and blown you away or done something
25 violent, the death penalty.

1 THE COURT: Can we assume ordinarily you'd
2 think two or more people were killed during the same
3 criminal transaction that that was violence?

4 VENIRE PERSON COOKSEY: I can't assume that.

5 THE COURT: You can't assume that. Let me
6 get to one other question. Page 14 and Question
7 No. 4. And this isn't so much a question but a list
8 of things to agree with or disagree. And you're asked
9 to check whether you agree with a particular
10 statement or disagree with them.

11 Statement No. 4 says: Any person man or
12 woman young or old who is guilty of capital murder
13 should pay with their own life and you answered that
14 you agreed with that and wrote in unless self-defense.

15 VENIRE PERSON COOKSEY: (Nods head.)

16 THE COURT: I guess there are several ways,
17 frankly, a person can read that question. One of them
18 would be any person, man or woman young or old who is
19 guilty of capital murder, that means every child
20 should pay with that life. Or the way it could be
21 read is everybody should receive the death penalty
22 who are guilty of capital murder.

23 Did you read the question that way? And
24 here, please feel free look at it. And please don't
25 feel uncomfortable. Nobody is challenging you.

1 VENIRE PERSON COOKSEY: When I read this I
2 took as capital murder as a violent crime. So, I
3 still stick with yes.

4 THE COURT: So, my question to you is this:
5 Perhaps I didn't ask it articulably. I'm satisfied.
6 I didn't. Now that you possess more information about
7 the sentencing alternatives that are available and if
8 you were asked to answer that same question again
9 taking into account the additional information that
10 you presently possess, would your answer to that
11 question always or be that if you always found
12 somebody guilty of capital murder and it wasn't
13 self-defense that you'd always answer these two
14 questions in such a way the death penalty would be
15 imposed?

16 VENIRE PERSON COOKSEY: I can't say that I
17 always would.

18 THE COURT: Are you then saying everybody's
19 case would be different?

20 VENIRE PERSON COOKSEY: Aren't you supposed
21 to judge everybody case?

22 THE COURT: Yes, ma'am. And what I'm
23 getting at is now you know that. When you filled this
24 out you did not. So, I'm just trying to see which
25 wins your thoughts now that you possess more

1 information than on the questionnaire when you didn't
2 possess any.

3 VENIRE PERSON COOKSEY: Now.

4 THE COURT: Okay. That's all I'm interested
5 in. Mr. McClellan.

6 MR. MCCLELLAN: Can I have just a moment? I
7 think we reached an agreement to excuse Ms. Cooksey.

8 THE COURT: Ms. Cooksey, thank you very much
9 for being with us. I'm going to excuse you. If you
10 need anything for work to show where you've been
11 three days. You don't need to worry about you coming
12 back until you get another notice in the mail like you
13 did last week.

14 (Prospective Juror No. 19, Ms. Ramie Colleen
15 Cooksey is excused by agreement.)

16 THE COURT: Now, I understand there's an
17 agreement by and between the parties that No. 19,
18 Ms. Ramie Colleen Cooksey may be excused.

19 Mr. McClellan.

20 MR. MCCLELLAN: Yes.

21 THE COURT: Ms. Connors.

22 MS. CONNORS: Yes.

23 THE COURT: Mr. Hill.

24 MR. HILL: Yes.

25 THE COURT: Mr. Wentz.

1 MR. WENTZ: Yes, sir.

2 THE COURT: Mr. Mamou, is that your
3 agreement, also?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And specifically, sir, you agree
6 Ms. Cooksey be excused?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very well. Ms. Cooksey is
9 excused.

10 (Prospective Juror No. 21, Ms. Stacie Marie
11 Sibley entered the courtroom.)

12 THE COURT: Right here, Ms. Sibley. Make
13 that corner hoping you find a chair right there. How
14 are you today?

15 VENIRE PERSON SIBLEY: Fine.

16 THE COURT: I want you to know Ms. Sibley
17 at the outset we're as happy to see you as you are to
18 see us. Before we begin, let me ask you to remember
19 back to yesterday some of the things we talked about
20 yesterday, add to them this morning the things we
21 talked about this morning and out of everything we
22 have talked about up to this point, do you have any
23 questions at all for me?

24 VENIRE PERSON SIBLEY: No.

25 THE COURT: Anything, Ms. Sibley, to this

1 point we have not yet talked about you feel as though
2 we should talk about might have some bearing on your
3 ability to be a juror in this case?

4 VENIRE PERSON SIBLEY: No.

5 THE COURT: Is there anything at all
6 Ms. Sibley whether it be something perhaps about your
7 personal life, perhaps something about your
8 professional life, perhaps something about your
9 health or something some other things that you could
10 think of that would anyway interfere with your ability
11 to be juror in this case during the time frame we
12 talked about?

13 VENIRE PERSON SIBLEY: No, sir.

14 THE COURT: We spent some time talking
15 about the rules that may come into play during the
16 course of a trial like this. And we talked about the
17 fact whatever result a jury reaches in a case must
18 always depend upon how that jury evaluated whatever
19 evidence is presented in this particular case.

20 That's why everything is always so unique
21 each case to all of the others because no defendant is
22 the same. No facts are the same. No victim is the
23 same. And no jury is the same. Everything is
24 variables are all there.

25 But I think that there are two primary

1 purposes meant to be accomplished going through this
2 process presently. And first purpose is to visit with
3 you and explain to you to the best of our ability the
4 rules that can come into play during the course of the
5 trial like this for the purposes, as I say, can the
6 prospective juror -- is the prospective juror, I
7 should say, willing to follow those rules.

8 And what we have talked about to this point,
9 anything you've heard, anything we've talked about or
10 discussed that you have a disagreement that rises to
11 the level that would cause you to not be able to
12 follow the law?

13 VENIRE PERSON SIBLEY: No, sir.

14 THE COURT: I think that the second aspect
15 of what this is about, this phase, is for the lawyers
16 to satisfy themselves and for particularly you to
17 satisfy yourself if you were juror and took any one of
18 those 12 chairs out there in jury box you would be
19 willing to listen to every single piece of information
20 given to you, evaluate it all however you see fit, and
21 come up with what you think is the right decision to
22 reach based upon how you evaluate the information
23 these lawyers have given to you.

24 Does that sound like something you could
25 and would do?

1 VENIRE PERSON SIBLEY: Oh, yes.

2 THE COURT: Keeping in mind, Ms. Sibley, it
3 is not your job to try to make one side happy or both
4 sides happy. It's not your job to try to make me
5 happy. Your job is to call it like you see it because
6 the only person who actually has to be happy is you
7 when five years from now you wake up some morning and
8 look in the mirror and say, "You know, I'm still
9 satisfied after five years what I did was absolutely
10 the right thing."

11 VENIRE PERSON SIBLEY: Okay.

12 THE COURT: And so it is trying to give you
13 the freedom to acquire a comfort zone what this is
14 about. So, the lawyers are going to visit with you
15 and they're going to ask you some general questions.
16 Their going to ask you probably about some things we
17 talked about and I'm sure ask you about some things we
18 haven't talked about.

19 But the root of it is to try to get the
20 depth of your satisfaction with your ability to be
21 able to sit as a juror in a case like this and that's
22 what we're doing.

23 VENIRE PERSON SIBLEY: Okay.

24 THE COURT: Mr. McClellan.

25 MR. MCCLELLAN: Thank you, Your Honor.

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STACIE MARIE SIBLEY,

having been sworn as a prospective juror, testified as follows:

EXAMINATION

QUESTIONS BY MR. MCCLELLAN:

Q Ma'am, is your last name Sibley or Risky?

A Actually it's Risky. Sibley's my maiden name.

Q I think it was on the short sheet it was Sibley and the long sheet it was Risky.

A They were calling me Sibley. I just signed it all the way.

Q Okay. So Ms. Risky, my name is Lyn McClellan. Along with Claire Connors, we represent the State of Texas in this case. I want to ask you some questions in general and kind of go over your questionnaire and go over some of those questions.

You obviously filled the questionnaire out before you had an opportunity to hear the Judge's voir dire both yesterday and today and there may be some different answers you might have put in there as a result of hearing that prior to filling out the questionnaire.

Did you really know what capital murder was or the distinction between murder and capital murder and capital murder requires murder plus some other crime.

1 A No, I did not know.

2 Q You did not. Most people don't and there's not much
3 reason for them to know that. And, of course, the Court
4 talked to you about murder which is the intentional taking
5 of another person's life. Not self-defense. Not an
6 accident.

7 A Right.

8 Q When you intend to kill someone the range of
9 punishment for that type of crime is five years to 99
10 years or life. You have no problem with that?

11 A No.

12 Q The capital murder then the death penalty applies or
13 life imprisonment applies. Those are the only two issues
14 and difference between murder and capital murder. Capital
15 murder has murder plus something else.

16 What we've alleged is capital murder during
17 kidnapping. The law says murder during robbery, assault,
18 killing police officers in the line of duty and killing a
19 child under the age of five. Also alleged is murder or
20 killing two or more people during one criminal episode.

21 Are those the kinds of cases, the ones the
22 Legislature set out are capital cases that you think the
23 death penalty ought to believe available for?

24 A I believe so, yes.

25 Q Okay. Some people think the death penalty ought to

1 be available for murder without those other aggravating
2 circumstances, and that's okay. But the law doesn't law
3 for that, okay. What kind of cases come to your mind when
4 you think of cases where you believe a person ought to
5 be eligible to receive the death penalty for committing
6 that crime?

7 A I think serial killers.

8 Q Okay. We mentioned that the first time.

9 A And also people that would kill somebody just out of
10 cold blood, no remorse, no reasoning for it.

11 Q Okay. All right. And do you understand though now
12 there are no crimes whether it be a serial killer who's
13 killed hundreds of people --

14 A Uh-huh.

15 Q -- or whether it be somebody who killed someone in
16 cold blood, there's no crime where you automatically get
17 the death penalty. Instead the death penalty is
18 determined by answering these questions that the jury has
19 to answer.

20 Do you understand that?

21 A Right. The questions on the -- yes.

22 Q That are right over there on the side.

23 A Yes, I understand that.

24 Q Right. Right. Do you agree with that's the way it
25 ought to be? We ought to have these questions and go

1 through this process and literally go step down by step
2 down the row or automatically assign the death penalty
3 for crime?

4 A I do believe after hearing the Judge discuss and
5 explain the questions I see now, yes, why it's necessary
6 to go by that.

7 Q Okay.

8 A Because you want to have the facts before you want
9 to have somebody's life ended, you know. So, I definitely
10 would agree with that.

11 Q There are a lot of safety guards in place. And you
12 have to go through a lot of different things in order to
13 get, if you ever do, a person should receive death.

14 A Exactly.

15 Q And you think that's the way it ought to be?

16 A Right. I don't think all of a sudden say, "Well,
17 they killed somebody; yes, you deserve to die too because
18 there's a lot of reasons why -- what could or could not
19 have caused that.

20 Q Right. Like some people come in and say: Well, I
21 don't think five years is too long for that. Well, the
22 murder they're thinking about maybe they don't know what
23 all the things they might hear.

24 A Exactly.

25 Q Might make it justified on some other case.

1 A Exactly.

2 Q Well, that's what the law asks you to do. You're
3 going to take an oath to a true verdict render according
4 to the law the Court gives you and the evidence you hear
5 in the courtroom. And all we're looking for are people
6 who will a true verdict render on the law and evidence.

7 A Right.

8 Q If the law and evidence leads you to not guilty, so
9 be it. And find guilty, that's fine. Answer these
10 questions death, so be it. If it leads you to answer no,
11 he gets life, so be it. But just take that oath and go
12 where the evidence and law leads me and do my job as a
13 juror.

14 Any problem with that aspect?

15 A No.

16 Q Do you have any doubts about your ability to
17 participate in this type process and make these type of
18 decisions knowing a decision you might make if that's what
19 the law and evidence called for would result in this Judge
20 ordering the execution of this defendant over here on
21 trial if that's what the law and evidence call for?

22 Are you comfortable with making those type
23 of decisions and participating in that type process?

24 A Yes, I am.

25 Q All right. You've not been on a jury before; is that

1 correct?

2 A Correct, I have not.

3 Q All right. Let me talk to you for a little bit about
4 the punishment stage of a capital murder case. First of
5 all, as you know the Judge told you that by referring to
6 the indictment that we've alleged the defendant in this
7 case committed capital murder in two ways: One,
8 intentionally taking the life of another person in Harris
9 County, Texas during the course of kidnapping. And, two,
10 intentionally taking the life of another person, two
11 people, during one criminal episode also in Harris County,
12 Texas.

13 A jury can find and may have both paragraphs
14 submitted to them. Maybe six jurors could find he's
15 guilty of kidnapping murder and six could find he's guilty
16 of killing two people during one criminal episode. And
17 your verdict would be: We, the jury, find the defendant
18 as guilty as charged in the indictment of capital murder.

19 You, in other words, don't have to agree
20 which method was done as long as you agree capital murder
21 was committed. Or you might find him not guilty. That
22 will be up to ya'll. If you find someone guilty of
23 capital murder then you go to punishment stage of trial.

24 Then you have an opportunity to hear
25 additional evidence that you didn't hear at guilt-

1 innocence because it wasn't relevant whether or not he
2 committed the crime. Guilt or innocence, you're
3 determining did we meet all the elements of the offense
4 shown in the indictment.

5 If we prove beyond a reasonable doubt he did
6 it, say yes. Then you go to punishment stage. There you
7 may hear evidence about the defendant's character, his
8 background, his criminal history or lack thereof, mental
9 ability or disability, type of family life he had, where
10 he grow up, all kinds of things about the person himself
11 because you're deciding what punishment this person should
12 receive for the crime you have found him guilty of.

13 Let's say -- there's no crime ever that I
14 know of where you automatically get the death penalty
15 because you have to answer these questions and there's not
16 an automatic saying the answers are death penalty. It
17 depends on the evidence shown. I mean the evidence show
18 wide extremes.

19 Somebody could be in and out of the
20 penitentiary all his life. That's one extreme. Somebody
21 could have been never been arrested before, that's another
22 extreme. Ya'll have to decide from looking at his
23 character and background and how that will apply in
24 answering all these questions.

25 Special Issue No. 1 says: Do you find from

1 the evidence beyond a reasonable doubt there's a
2 probability the defendant would commit criminal acts of
3 violence that would constitute a continuing threat to
4 society?

5 First of all, let's talk about a
6 probability. It doesn't say possibility. It doesn't
7 say a certainty. I mean, it's a probability I could win
8 the lottery Saturday but not likely. Probably, I suggest,
9 means a more likely than a possibility less than a 100
10 percent certainty.

11 More likely than not that the defendant
12 would commit criminal acts of violence. Doesn't say
13 another murder or capital murder. Those are obviously
14 acts of criminal violence. Could be a robbery, a
15 burglary, could be a sexual assault, could be
16 hitting someone so hard with their fist knocking them
17 out causing personal injury could be criminal and violent
18 in nature.

19 What that question is asking you to do is
20 look at the crime itself, the evidence you heard at guilt
21 or innocence, look at the evidence you heard in punishment
22 about the defendant's character, background, criminal
23 history, mental abilities, all that, and do you believe
24 now beyond a reasonable doubt there is a probability that
25 it's more likely than not that the defendant would commit

1 criminal acts of violence that constitute a continuing
2 threat to society.

3 If you believe the answer is yes, you answer
4 yes. If you believe the answer is no, we have failed to
5 prove it a yes, you answer no. Okay. Now some people
6 say: Well, if I have found somebody guilty of capital
7 murder, I would always find there's a probability they'd
8 be a continuing threat to commit future acts of violence
9 but that may not be the case when you look at background,
10 his character, how he's brought up, all these other
11 things.

12 You may see areas in here and say: Hey,
13 this is somebody I would not expect to commit this crime
14 let alone another one. We know he committed this crime
15 but I wouldn't expect him to be a continuing threat.

16 Several years ago, I think it's South
17 Carolina, Susan Smith, the lady who had two kids in the
18 back of the car and road it off into the lake and claimed
19 somebody abducted her car and killed her two kids; she was
20 charged with capital murder, was found guilty and given a
21 life sentence.

22 I don't know if they have issues or not.
23 They may have decided she wouldn't be a continuing threat
24 to commit future violent acts even though horrible, she's
25 not going to be robbing a bank or any other. That might

1 be an area.

2 A Right.

3 Q You see, it depends upon the facts or circumstances.
4 That's why you have to wait until you hear everything to
5 make the decision. If you answer Issue No. 1 yes, then
6 the person is going to receive the death penalty unless
7 you determine on Issue No. 2 there are reason or reasons
8 he should not.

9 It says: Do you find that after taking into
10 consideration all of the evidence and goes on to tell you
11 what is the circumstances of the offense, the defendant's
12 character and background, his personal moral culpability,
13 I like to refer to it as personal responsibility for the
14 crime, is he the person who caused the death or getaway
15 driver or just a party to the offense, and then do you
16 find there is a sufficient mitigating circumstance or
17 circumstances, I like to refer it to as sufficient reasons
18 why this person should receive life as opposed to death.

19 What it asks you to do basically is go back
20 and look at all the evidence you heard and see if any of
21 the evidence mitigates towards a life sentence. For
22 example, you may have heard during the course of trial the
23 defendant was high on drugs or alcohol when he committed
24 the crime.

25 One juror might say: Well, in my mind that

1 mitigates towards a life sentence. When you're high on
2 drugs or alcohol you do things you wouldn't do. You're
3 not in your right mind. Somebody else may say: Wait a
4 second. I know a lot of people who get high on drugs and
5 alcohol and don't go out and commit capital murder. I
6 don't see a connection of getting high on drugs or alcohol
7 that causes a person to commit capital murder and get high
8 on drugs or alcohol.

9 Again, that could be a real problem and
10 thinks that's not mitigating. That's okay. Two people
11 look at the same evidence and came up with different
12 opinions. That's okay. What the process asks you to do
13 is for you to examine the witnesses, for you to weigh it
14 in your mind and determine what affect to give it. Is it
15 mitigating or not.

16 Same thing about mental ability. May be a
17 slow learner or Special Ed student. Somebody may say that
18 mitigates towards a life sentence. Somebody may say, no,
19 it doesn't. I know people that have that kind of problem
20 all along in neighborhood, church, work, school and they
21 don't -- they're not a threat or anything, I see. And so
22 I don't think that has any affect on it being a mitigating
23 factor.

24 Somebody else may think it is the age of a
25 person. Say he's a real young man. When you're young you

1 do stupid things. Done things wish you hadn't. When you
2 grow older you mature. Somebody thinks this is
3 mitigating. Somebody may say it's not mitigating. When
4 related to age, that's not a factor.

5 So, it just asks you to go back and look
6 through the evidence to see if there's anything mitigating
7 or not. If there is, set it aside and weigh it see if
8 it's sufficiently mitigating to change your answer from
9 death to life. If it is, you do; or if it's not, you
10 don't.

11 There's a question about mitigation in here.
12 Let me see. Okay. You indicated you believe the
13 mitigating evidence should be considered in deciding those
14 issues. Sometimes I don't know that everybody understands
15 what the word mitigation means.

16 A I didn't. To be honest with you, I didn't know.

17 Q And I don't think anybody does except for a few
18 lawyers who sit around here and talk about that. It's
19 not a word we use everyday. We're talking about evidence
20 that tends to give you a reason to give somebody a break,
21 if you will, to give them a life sentence as opposed to
22 death.

23 That's what issue No. 2 does. When you've
24 already decided -- when you get there you've already
25 decided capital murder, already decided a continuing

1 threat to commit future acts of violence. You're deciding
2 is there a reason or reasons this person we have a life
3 sentence as opposed to death. Maybe had something to with
4 background or whatever. Had something to do with
5 anything. It's your decision to make and you're alone.

6 Every individual person has to make their
7 own decision. And it gives you that opportunity to make
8 sure. Basically, it's another way of saying are you sure
9 that you want him to get the death penalty, gives you an
10 opportunity to give him life as opposed to death if you
11 find there are reasons and sufficient ones, okay.

12 Any problem with the way that process is
13 settled?

14 A No. Nothing.

15 Q Any reason that you know of that you wouldn't be able
16 to go through this type of process and go through those
17 decisions?

18 A No.

19 Q Okay. There's a question in here more likely to agree
20 or disagree with statements. One of them says: The death
21 penalty is always justified for intentional murder. I
22 guess someone may interpret always meaning everytime. Of
23 course, the only murder is intentional because murder --
24 there's not accidental murder, not unintentional murder.

25 So, what you would be saying if you agreed

1 with that, now you learned all the stuff the Judge said
2 through voir dire, is the death penalty applies to anybody
3 who kills. Anybody always be given to somebody else. You
4 know that's a process that doesn't apply to everybody who
5 kills somebody. In fact, just the killing alone and
6 intentional murder doesn't even apply at all.

7 Is that the way you still believe? And if
8 it does, that's fine. Just you --

9 A Okay. So, ask this question again. I want to make
10 sure my answer is correct.

11 Q Just answer if you more likely disagree with this
12 statement.

13 A Which number is it?

14 Q It's 14 and 14. Page 14 No. 14.

15 A Okay. I'm sorry.

16 Q Death penalty is always justified for intentional
17 murder.

18 A Meaning that anytime somebody is murdered the death
19 penalty should apply?

20 Q That would be how one person views it, yes.

21 A Okay. Again, I'm unsure -- I mean, going by that then
22 they wouldn't necessarily always be put to death.

23 Q That's right.

24 A How long they got some sort of punishment. Then going
25 by that, then I guess --

1 Q By that you mean the questions?

2 A Right. Because yes and then no would mean death or
3 yes and yes or any other way I understand that it would be
4 life imprisonment. As long as -- because without knowing
5 the evidence you don't know the reason for the murder, how
6 it came about. So, I don't want to say you kill somebody
7 just because they killed somebody because you don't know
8 the circumstances or the evidence.

9 Now, if it's something like that and they
10 had as long as they need to be punished period, I felt
11 that way.

12 Q And you know there's nothing -- no two punishments.

13 A Exactly.

14 Q Life or death. You find somebody guilty of capital
15 murder and going to get to decide looking at the questions
16 and looking at everything that's available.

17 A Right.

18 Q And so there is no, you killed somebody you die. You
19 have to go through all this process.

20 A Right. Right. Then I would disagree with that
21 because I don't -- I understand a little more clearly now.

22 Q And, sure, that's the reason we go through all this
23 process. And even if you still thought you got the death
24 penalty, that's fine, just as long as you're able to set
25 that aside and follow your oath as a juror.

1 A Right.

2 Q Which is going to mean it doesn't apply anymore.

3 A Right.

4 Q I have to do what the law and evidence says.

5 A Exactly. What makes more sense to me.

6 Q Any questions you have of me?

7 A None.

8 Q I thank you very much and going to pass you to
9 Mr. Wentz.

10 THE COURT: Thank you. Mr. Wentz.

11

12

EXAMINATION

13 **QUESTIONS BY MR. WENTZ:**

14 Q Morning -- good afternoon. How are you?

15 A Fine.

16 MR. WENTZ: Your Honor, is there a copy
17 of her questionnaire she could look at?

18 THE COURT: If it's agreeable I have a
19 copy I have not written on.

20 MR. WENTZ: Certainly.

21 Q (By Mr. Wentz) For about the next 20 minutes I
22 would like to talk to you basically about who you are
23 and what you think and what you feel because, ultimately,
24 12 people are going to sit in judgment of a case brought
25 by the State of Texas and it's always been my thought that

1 when it comes time to make real important decisions it's
2 the values and beliefs that each person has that go into
3 the or the shaping of how they come to the decision they
4 do and influence the decision that they do.

5 So, as we talk I would like, if you would,
6 to share with me your thoughts and feelings you might have
7 about the subjects that we're talking about. And you said
8 something -- I'm going to start off maybe by insulting
9 you.

10 A That's fine.

11 Q You said something I want to make sure you answer
12 the question correctly. When you were visiting with
13 Mr. McClellan -- there are no right or wrong answers only
14 what you feel or think and that's all that I care about.

15 A Sure.

16 Q On Page 6 of the questionnaire you're asked to answer
17 a few series of agree/disagree statements. And one of
18 them is: Obedience and respect for authority are the most
19 important virtues children should learn. And you said
20 that you strongly agree with that. Can you tell me the
21 reason that you answered in that respect?

22 A Was it No. 12?

23 Q No. 12, yes.

24 A Okay. I'm going to answer it how I interpreted the
25 question. I might have did it wrong. To me I was

1 thinking the question was asking that children their
2 virtues as them growing up the way they turn out is going
3 to reflect on them from the way they were brought up as
4 opposed to obedience.

5 To me when I think of that where are they
6 corrected as a child? Did they get away with anything
7 they wanted were they taught to respect certain people in
8 positions as far as what is wrong and right.

9 Those two obedience and respect as far as
10 the virtues of children should -- I think they should
11 learn that in order for them to make strong decisions,
12 right decisions as they're older. Not be -- messed that
13 all up, I did. That's what I thought it to be.

14 Q Don't worry at all. But I think from what you're
15 telling me is that you do feel the environment in which
16 children is raised is important in terms of how they
17 ultimately grow up.

18 A Definitely, I do.

19 Q And this question talks about obedience and respect
20 for authority. Do you think that love and respecting
21 others are important values also that children should be
22 taught?

23 A Oh, yes.

24 Q And these children are absolute -- there's a little
25 bit of unfairness built into them. I would like for you,

1 if you could, to turn towards the end of the questionnaire
2 where you were asked some questions about feelings about
3 the death penitentiary at this point. And you asked these
4 questions before you had this elaborate explanation given
5 to you.

6 And basically off the top of your head what
7 do you think about the death penalty?

8 A Meaning what?

9 Q In other words --

10 A How I feel about another person's ending towards
11 that?

12 Q Yes, somebody doing something that society feels
13 that the death penalty is an option for if they did that
14 thing wrong.

15 A Okay. Almost kind of like I answered earlier, I do
16 believe in the death penalty. I do believe that in some
17 cases not knowing what lead up to that moment or what's
18 happened, I don't believe that all people -- I guess it's
19 kind of -- I don't want to contradict myself but --

20 Q You're not.

21 A I do believe in the death penalty, yes. I guess in
22 order for me to say I don't have a problem with serial
23 killers that kill several people, I don't have a problem
24 with that. I mean, because they've killed more than one
25 person over and over. That's a role they're taking on.

1 If a person just killed, you know, one
2 person, depending on what the evidence was or
3 circumstances, what that could be a whole knew, I mean,
4 reasoning. I mean, I would think before I would sit there
5 and decide, yes, a person put to death. If I was a juror
6 in that case, I would really have to know the evidence
7 truly factual before ending a person's life.

8 Q You know that one of the allegations contained in the
9 State's case is that Mr. Mamou allegedly took two people's
10 lives in the course of the same transaction.

11 A I understand that.

12 Q In your mind does that make him a serial killer, just
13 that allegation?

14 A No, because I don't know what the evidence is, what
15 happened or what lead up to that moment.

16 Q Okay. One of the things that jurors have to do is
17 decide whether or not the State's met its burden of proof
18 and it's beyond a reasonable doubt. Now, this is your
19 first experience as a juror, correct?

20 A Correct.

21 Q And you've had some conversations with the Judge
22 already about reasonable doubt. Do you recall some of
23 those words he mentioned to you that proof beyond a
24 reasonable doubt must be proof of such a convincing
25 character that you would be willing to rely and act

1 pretty important determination this person has committed
2 society's most horrible crime. You believe it beyond a
3 reasonable doubt and you believe that the death was done
4 intentionally. And when you look at that question it asks
5 you to determine a couple of things; and one is there's a
6 probability that the defendant would commit criminal acts
7 of violence in the future.

8 Isn't that exactly the type of person that
9 you would expect to do wrong things in the future, someone
10 who would commit a murder?

11 A Yes and no. I -- you mean if somebody -- if the State
12 was able to show -- prove evidence that, yes, he was
13 guilty of the murder and he did the murder; well then we
14 already know that No. 1 would be, yes, he's guilty.

15 And then the next one would be: Well, do
16 you think he would do it again? I don't know. I mean
17 it's different on each person, I guess, because I don't
18 know him. I don't know anything about the case. I don't
19 know. I haven't read nothing in the papers. I don't know
20 anything. And every individual person is different to me.

21 Q And you know though in answering Special Issue No. 1
22 it's just not a possibility he might do it, it's more
23 likely than not. In other words, it has a more than a 50
24 percent chance at the very least?

25 A Right.

1 Q And you get to determine for yourself what those
2 words mean to you. And it asks you to look at his future
3 behavior not just in terms of would he do something wrong
4 but would it be a wrong of such a magnitude that it would
5 be a criminal act of violence that would constitute a
6 continuing threat to society; which is, I think, a step
7 above many types of criminal acts.

8 Would you agree with me?

9 A Right, I do.

10 Q Have you ever thought about what it would be like to
11 spend 40 years in prison?

12 A Honestly, no, I have not.

13 Q Certainly a substantial amount of time --

14 A Can I say one thing though --

15 Q Please.

16 A I thought about it to a degree whereas and I think I
17 put on here in some cases where someone commits murder
18 depending on the individual, I think sometimes it's better
19 for a person to receive life imprisonment because
20 depending on that person the death penalty -- how can I
21 say this -- giving them the death penalty, well that would
22 be like a way out for somebody in some cases.

23 And other persons that if they have like
24 morals and they care what about they did are remorseful
25 for what they did that they have this 40 years to think

1 about what they did.

2 Q And that's at least 40 years could conceivably be
3 more.

4 A Exactly. And that 40 years, I mean that's something
5 they have to live with the rest of their life and nobody
6 can make them feel any differently about it.

7 Q The Judge was speaking to you about prison this
8 morning. Had you ever thought about prison being our
9 society?

10 A What do you mean? Oh, yes, whenever somebody says
11 the community or society I think of everybody. I really
12 never thought about it any other way.

13 Q So prison as you see it is a part of our society?

14 A Uh-huh.

15 Q I'm sure you appreciate that living in prison is a
16 whole lot different than living in the world you and I
17 live in. Basically behind bars.

18 A Right.

19 Q Around policeman but certainly there are a lot of the
20 guards and they live under different rules and regulations
21 you and I live under. What may be a prison offense is
22 what we might do everyday of the week and nothing happens
23 to us.

24 A Right.

25 Q Do you think prison can change people?

1 A Depending on the person, possibly. I really don't
2 know.

3 Q I think you stated on Page 14 you were given prison
4 makes convicted people worse and you disagree with that.
5 Do you see it, No. 16?

6 A Uh-huh. I see. Okay. Prison making convicted people
7 worse? I don't see, I guess. No, I do disagree.

8 Q In what way?

9 A Meaning if a person is in prison for committing a
10 crime such as murder I don't know how it can make a
11 person any worse if they're not out to do it again other
12 than if they can't. I don't know, I'm just --

13 Q You're doing fine. Don't worry.

14 A I'm just saying I don't know. It's hard for me
15 because I'm not in their shoes. I don't know. I'm just
16 trying to assume what a person would feel. You're asking
17 me questions -- I filled this out trying to imagine
18 myself.

19 Would it make any worse? I don't know. It
20 would depend on each individual person. Some people it
21 may, some people it may not.

22 Q Have you ever heard of cases where somebody is found
23 guilty of something actually punished for a crime and it
24 was later determined that they were not guilty of crime
25 and they were released? Have you ever heard of that

1 happening? Comes up in the news every now and then.

2 A I'm sure I have. I can't think right off the top of
3 my head. I don't -- I can't think of anything.

4 Q Look at Special Issue No. 2, and I think that issue
5 comes at the tailend of this process and it gives you the
6 opportunity to rethink everything that's gone before you,
7 the finding of guilty whether or not the person is going
8 to be a future danger to society.

9 And it gives you as a member of society one
10 last chance to look at that person and decide if this is
11 really the right decision and you find there is a
12 circumstance or circumstances that warrant life you can
13 say so at that point.

14 You sort of indicated when you were filling
15 out the questionnaire in Question 68 you really didn't
16 understand or fully think about mitigating evidence when
17 you answered it. Do you have a better idea about that
18 now?

19 A Somewhat from what I understand they were saying.

20 Q Basically it's saying that you may see in terms of the
21 person the crime or all of the evidence put together that
22 leads you to believe that life is really the proper thing
23 for the person even though he may be a murderer, even
24 though in your mind he may be a future danger; there's
25 something about the case, something about the person that

1 warrants him living forever.

2 How do you feel about answering that type
3 of question?

4 A Well --

5 Q Do you think you can answer the question?

6 A Well, I'm going to because if I was picked as a juror
7 that's the question that may come up that I would have to
8 answer depending on what that part of the trial would be.
9 I do believe that there's a lot that you have to look at,
10 a lot of the evidence that you have to know that's factual
11 and believe in, as I said earlier, before you would want
12 to make a decision I mean --

13 Q The question asks you to look at the case and --

14 A Right.

15 Q -- as well as the person. And you may find from
16 looking at the case there's something that may bother you
17 about the case, something that is still a lingering
18 problem. Do you think in that circumstance you could say,
19 okay, fine, I do believe that's something I'm not
20 satisfied and that person should receive a life sentence
21 because of my uncertainty in this area?

22 A You mean during trial could I?

23 Q Oh, yes.

24 A If that came -- I mean if I believe in something
25 differently I don't have -- I will disagree if I disagree

1 with other people. If I believe something or if I see it
2 another way I'll speak up and say this is why I think that
3 and it's different I will, yeah.

4 Q And I think that's always a concern with young people
5 because they may be surrounded by people who are older
6 than themselves. Is that what you're telling us?

7 A I would not be intimidated by someone that was older
8 and telling --

9 Q And you wouldn't change your mind?

10 A Not if I believe in something.

11 Q One of -- the State has to do is provide you evidence
12 and comes from witnesses. Have you ever thought a witness
13 might lie? Have you ever thought that a witness would
14 lie?

15 A I'm sure.

16 Q Yes. And you realize sometimes that the case could
17 conceivably be hinged on whether or not you believe a
18 witness that you thought was lying. This morning the
19 Judge says you not only have to look at the message but
20 look at the messenger. Would you be able to do that? A
21 Oh, yes.

22 Q What things do you think are important for me to know
23 about you as my last question to you this afternoon?

24 A I'll just tell you a few things. I really don't know.
25 I know that I am nervous. I mean, like I said I've never

1 done anything like that. I'm an honest person. I'm out-
2 spoken. I'll speak my mind if I don't understand some-
3 thing. I'll be the first to say it if I disagree, I'll
4 say it. I'm a family-oriented person. I do have a
5 family. I mean, I don't know what else.

6 Q This is all very unfair you're sharing so much of
7 yourself with us and we're not revealing very much about
8 ourselves. I would like to thank you very much for being
9 so forthcoming and talking with me.

10 A Sure. No problem.

11 THE COURT: Thank you, sir. Ms. Risky, in
12 just a second I'm going to excuse you. Before I do, I
13 will tell you we want you back on Wednesday the 29th
14 of September, which I believe to have been three weeks
15 from yesterday. In just a second I'll give you a
16 reminder and where we want you to be.

17 First off, I want to tell you between now
18 and when we do see you again, please don't you alter
19 your lifestyle one bit for us. You do your family
20 things, personal things just exactly as the way you
21 ordinarily do them. Do your work things just like you
22 ordinarily do.

23 If you have a chance to leave town for a
24 time, take a chance and go. The only thing I do ask
25 of you between now and when we see you again is this:

1 Please do not talk about this case with anybody.

2 Please do not let anybody talk about this case with
3 you.

4 Now when I say talk about the case I'm not
5 talking about going back and making arrangements for
6 being down here. I'm talking about the details of the
7 case. Between now and when we see you again if
8 there's any news media coverage regarding this case,
9 avoid it. If there's any television, refuse to watch
10 it. In the newspaper, refuse to read it. On the
11 radio, refuse to hear it.

12 And the reason, Ms. Risky, for each of those
13 five restrictions is for the purpose of accomplishing
14 the same objective and that's this: If you do become
15 a juror in this case the decision that you wind up
16 reaching whatever that decision happens to be must be
17 based exclusively upon the information you receive
18 from within the courtroom.

19 VENIRE PERSON SIBLEY: Right.

20 THE COURT: And can't in any way be
21 affected or influenced by any outside the courtroom
22 information. So, it is for this reason we try to make
23 this as pristine an operation as possible. If you
24 need something for the folks at work to show them
25 where you have been for what is it now the last three

1 days with us this is the reminder note that where we
2 want you to be and when we want you to be here
3 Wednesday, September 29th, right outside the door at
4 9:30.

5 Now we're going to have, I guess, right at
6 50 people. If we can get everybody here on time and
7 if we can get started on time everybody will be out of
8 here by noon. Everybody will leave on this day
9 knowing definitely whether they are or are not a
10 juror in the case..

11 Before you leave, do you have any questions
12 at all for me?

13 VENIRE PERSON SIBLEY: No, sir.

14 THE COURT: With that you're excused.
15 Thank you very much. Look forward to seeing you.

16 MR. MCCLELLAN: Thank you, ma'am.

17 THE COURT: This is off the record.

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22 (Court adjourned for the day.)

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1
2
3 THE STATE OF TEXAS)

4)
5 COUNTY OF HARRIS)

6 I, Wendy Wilkerson, Deputy Official Court Reporter
7 in and for the 179th District Court of Harris County,
8 State of Texas, do hereby certify that the above and
9 foregoing pages contain a true and correct transcription
10 of all portions of evidence and other proceedings
11 requested in writing by counsel for the parties to be
12 included in this volume of the Reporter's Record, in the
13 above-styled and numbered cause, all of which occurred in
14 open Court or in chambers and were reported by me.

15 I further certify that this Reporter's Record of
16 the proceedings truly and correctly reflects the exhibits,
17 if any, admitted by the respective parties.

18 WITNESS MY OFFICIAL HAND this the 17th day of
19 March, 2000.

20
21 Wendy Wilkerson
22 WENDY WILKERSON, Texas CSR
23 Deputy Official Court Reporter
24 179th District Court
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